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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1959~~ 1960

No. ~~681~~ 25

GUS POLITES, PETITIONER,

VS.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 5, 1960

CERTIORARI GRANTED FEBRUARY 23, 1960

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1959~~ 1960

No. ~~611~~ 25

GUS POLITES, PETITIONER,

vs.

UNITED STATES

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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**IN THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT**

GUSS POLITES, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

Appeal from the District Court of the United States for
the Eastern District of Michigan, Southern Division

Appendix for Appellant—Filed July 16, 1959

[File endorsement omitted.]

[fol. a] IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN

COMPLAINT TO CANCEL CITIZENSHIP—Filed June 16, 1952

The United States of America, by Philip A Hart, United States Attorney for the Eastern District of Michigan, by J. Connor Austin, Assistant United States Attorney for said district, herewith presents its complaint under and pursuant to Section 38 (a) of the Nationality Act of 1940, 54 Stat. 1158 (Sec. 738 (a), USC, Title 8), against Guss Polites, and respectfully represents:

1. That the said Guss Polites was, prior to April 6, 1942, a native and citizen of Greece.

2. That the said Guss Polites entered the United States on September 20, 1916, and thereafter resided in the United States and now resides in the United States and in this judicial district, his last known place of residence being at 2983 Virginia Park, Detroit 6, Michigan.

3. That on October 6, 1941, the said Guss Polites filed petition for naturalization No. 155993 in the United States District Court for the Eastern District of Michigan, Southern Division, at Detroit, pursuant to Section 310 (b) of the Nationality Act of 1940 (54 Stat. 1144(b)), in which he represented and set forth under oath as follows:

(a) That he was not, and had not been for the period of at least ten years immediately preceding the date of

his naturalization petition, an anarchist; nor a believer in unlawful damage, injury, or destruction of property, or sabotage; nor a disbeliever in or opposed to organized Government;

(b) That he was, and had been during all of the periods required by law, attached to the principles of the Constitution [fol. b] of the United States, and well disposed to the good order and happiness of the United States.

4. That on October 6, 1941, the said Guss Polites was questioned by a United States Naturalization Examiner, under oath, and testified that he was not a believer in anarchy, that he did not belong to and was not associated with any organization which teaches or advocates anarchy or the overthrow of the existing government of this country; that he understood the principles of the government of the United States and that he did fully believe in the form of government of the United States.

5. That on December 16, 1940, the said Guss Polites, then known as Constantino Polites, in registering as an alien pursuant to the Alien Registration Act of 1940, alleged under oath as follows:

"10. I am, or have been within the past 5 years, or intend to be engaged in the following activities: In addition to other information, list memberships or activities in clubs, organizations, or societies.

(answer) none

"15. Within the past 5 years I have not been affiliated with or active in (a member of, official of, a worker for) organizations, devoted in whole or in part to influencing or furthering the political activities, public relations, or public policy of a foreign government."

6. That on April 6, 1942, the said Guss Polites took an oath of allegiance to the United States, in open court, which reads as follows:

"I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity [fol. c] to any foreign prince, potentate, state, or sov-

ereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So, Help Me God."

whereupon the United States District Court for the Eastern District of Michigan, Southern Division, at Detroit, relying upon the truth and good faith of the representations made by the said Guss Polites, in his petition for citizenship and other immigration and naturalization forms required of a petitioner for naturalization, including registration under the Alien Registration Act of 1940; and before the Naturalization Examiner, granted the prayer in his petition and entered the order admitting him to citizenship in the United States, and thereupon Certificate of Naturalization Number 5499193 was issued to him by the Clerk of the Court.

7. That the representations aforesaid made by the said Guss Polites in his petition for citizenship, and in his Alien Registration form, and before the Naturalization Examiner, as well as the oath which he took, as described above, were false and fraudulent, and at the time of making said representations and taking said oath said defendant knew that they were false and fraudulent, in that the said defendant concealed the fact that he was a member of and affiliated with the Communist Party of the United States from the year 1933 to the year 1941 at least, inclusive, an organization which during the years from 1933 to 1941, inclusive:

[fol. d] A. Advised, advocated, or taught the overthrow by force or violence of the government of the United States;

B. Advised, advocated, or taught the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers of the government of the United States because of his or their official character;

C. Advised, advocated, or taught the unlawful damage, injury, or destruction of property;

D. Advised, advocated, or taught sabotage;

E. Wrote, circulated, distributed, printed, published, or displayed, or caused to be written, circulated, distributed, printed, published, or displayed, or had in its possession for the purpose of circulation, distribution, publication, issuing, or display, written and printed matter which advised, advocated or taught the performance of the acts described in paragraphs A, B, C and D above.

That during the years 1933 to 1946 inclusive, the Communist Party of the United States was a section of an international organization whose principal officers were citizens or subjects of foreign countries and the principal officers of which were situated in Moscow, in the Union of Soviet Socialist Republics; that decisions made by such international organization were binding upon other Communist parties, including the Communist Party of the United States and the individual members thereof, whether such decisions were contrary to the laws of the United States or not.

[fol. e] That the said Guss Polites, at all of the times above mentioned, was familiar with and approved of the activities, aims, and teachings of the Communist Party, as set forth above.

8. That the said Guss Polites deliberately and intentionally testified falsely in the course of his naturalization proceeding, and willfully concealed material facts as set forth in the preceding sub-paragraphs, in order to prevent the making of a full and proper investigation of his qualifications for citizenship; to induce the Immigration and Naturalization Service to make an unconditional recommendation to the court that his petition be granted; to preclude inquiry by the court concerning his qualifications for citizenship; and to procure naturalization in violation of law.

9. That the United States Attorney instituted this proceeding upon the certificate of Reuben Speiser, an attorney for the Immigration and Naturalization Service, United States Department of Justice, showing good cause therefor, which affidavit is attached hereto and made a part hereof.

10. That said order of admission to citizenship and certificate of naturalization of said Guss Polites were fraudulently and illegally procured, in violation of Section 305.

the third subdivision of Section 307 (a), and Section 335 (a) of the Nationality Act of 1940 (54 Stat. 1141, 1142, and 1157), in that he was not a person of good moral character; was not attached to the principles of the Constitution and well disposed to the good order and happiness of the United States; was barred from naturalization as a member of an [fol. f] organization described in Section 705, USC Title 8, and, despite his oath to the contrary, he intended to preserve his allegiance to an international organization.

Wherefore, plaintiff prays that an order be entered in this cause revoking and setting aside the order heretofore entered admitting the said Guss Polites to citizenship, upon petition No. 155993, and cancelling Certificate of Naturalization No. 5499193, heretofore issued to Guss Polites, on the ground of fraud and illegality; and further ordering that said certificate shall be delivered and surrendered to the Clerk of the United States District Court for the Eastern District of Michigan, and transmitted by him to the Commissioner of Immigration and Naturalization, Washington, D. C., and that the Clerk of this Court forthwith transmit a certified copy of this order to the Commissioner of Immigration and Naturalization, Washington, D. C.; and that the said defendant be forever restrained and enjoined from claiming any right, privilege, benefit or advantage whatsoever under said certificate of naturalization or order admitting him to citizenship; and for such other and further relief as may be proper.

Philip A. Hart, United States Attorney, J. Connor Austin, Assistant United States Attorney.

[fol. g] AFFIDAVIT IN SUPPORT OF COMPLAINT

C-5499193

UNITED STATES OF AMERICA,
District of Columbia, ss:

Reuben Speiser, being duly sworn, deposes and says:

1. That he is an Attorney, Immigration and Naturalization Service, United States Department of Justice, and

as such has access to the official records of the said Service, from which the following facts appear:

(a) That Constantine Polites filed a petition for naturalization in the United States District Court at Detroit, Michigan, on October 6, 1941; he was admitted to citizenship on April 6, 1942, and received certificate of naturalization No. 5499193 in the name Guss Polites.

(b) That said Polites, on December 16, 1940, when registering as an alien pursuant to the Alien Registration Act of 1940, alleged under oath as follows:

"10. I am, or have been within the past 5 years, or intend to be engaged in the following activities: In addition to other information, list memberships or activities in clubs, organizations, or societies.

(Answer) none

.

"15. Within the past 5 years I *have not* been affiliated with or active in (a member of, official of, a worker for) organizations, devoted in whole or in part to influencing or furthering the political activities, public relations, or public policy of a foreign government."

(c) That said Polites, on October 6, 1941, in the course of his preliminary naturalization examination, alleged under oath that he did not belong to and was not associated with any organization which taught or advocated the overthrow of existing government in this country.

(d) That said Polites, on October 6, 1941, in his petition for naturalization, alleged under oath: (1) that it was his intention in good faith to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which he was then a subject or citizen; (2) that he was not, and had not been for the period of at least ten years immediately preceding the date of his petition, a believer in the unlawful damage, injury, or destruction of property, or sabotage; nor a disbeliever in or opposed to organized government; nor a member of or affiliated with any organization or body of persons teaching

disbelief in or opposition to organized government; and (3) that he was, and had been during all of the periods required by law, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.

(e) That allegations of said Polites as set forth in sub-paragraphs 1(b), 1(c), and 1(d), were false and untrue. The truth was that said Polites had been a member of and active in the affairs of the Communist Party of the United States continuously since about 1933.

(f) That the Communist Party of the United States was an organization which, during the period 1933 to 1941, [fol. i] inclusive:

- I. Advised, advocated, or taught the overthrow by force or violence of the government of the United States;
- II. Advised, advocated, or taught the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers of the government or their official character;
- III. Advised, advocated, or taught the unlawful damage, injury, or destruction of property;
- IV. Advised, advocated or taught sabotage;
- V. Wrote, circulated, distributed, printed, published, or displayed, or caused to be written, circulated, distributed, printed, published, or displayed or had in its possession for the purpose of circulation, distribution, publication, issuing, or display, written and printed matter which advised, advocated, or taught the performance of the acts described in sub-paragraphs 1(f), I, II, III, and IV;
- VI. Promoted, influenced, and advanced the political activities, public relations, and public policy of the Union of Soviet Socialist Republics.

(g) That at all of the times above mentioned, the Communist Party of the United States was a section of the Communist International, an organization whose principal officers were citizens or subjects of foreign countries and

the principal officers of which were situated in Moscow, in the Union of Soviet Socialist Republics; that decisions made by such organizations were binding upon other Communist parties, including the Communist Party of the United States and the individual members thereof, whether such decisions were contrary to the laws of the United States or not.

(h) That the said Polites deliberately and intentionally made false statements in the proceedings leading up to [fol. j] his naturalization as set forth in the preceding subparagraphs in order to prevent the making of a full and proper investigation of his qualifications for citizenship; to conceal his lack of attachment to the principles of the Constitution; to induce the Immigration and Naturalization Service to make an unconditional recommendation to the court that his petition be granted; to preclude inquiry by the court concerning his qualifications for citizenship; and to procure naturalization in violation of law.

2. That the naturalization of the said Polites was illegally and fraudulently procured in that:—

(a) He was not a person of good moral character during the period required by law inasmuch as he had made false statements in the proceedings leading up to his naturalization, as more particularly set forth in paragraph 1.

(b) He was not attached to the principles of the Constitution and well disposed to the good order and happiness of the United States during the period required by law inasmuch as he had been a member of the Communist Party of the United States, an organization which, to his knowledge, had engaged in activities as set forth in subparagraph 1(f).

(c) His naturalization was prohibited by Section 305 of the Nationality Act of 1940, in that he was and had been a member of the Communist Party of the United States during the period of ten years immediately preceding the filing of his petition, such organization having engaged in activities proscribed by the statute.

[fol. k]. (d) That he deliberately and intentionally made false statements in the proceedings leading up to his naturalization concerning his membership in the Communist Party of the United States, as more particularly set forth

in paragraph 1; and that such false testimony was given by him for the purposes set forth in subparagraph 1(h).

(e) That he did not intend in good faith to support the Constitution of the United States, to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign state or sovereignty, and to bear true faith and allegiance to the United States, inasmuch as he intended to and did retain allegiance to the Communist International and the Union of Soviet Socialist Republics.

3. That good cause exists for the institution of a suit under Section 338(a) of the Nationality Act of 1940 (8 U.S.C. 738(a)) to set aside and cancel the naturalization of said Polites as having been illegally and fraudulently procured.

4. That the last known place of residence of said Polites is 2983 Virginia Park, Detroit 6, Michigan.

(Signed) Reuben Speiser, Attorney.

Subscribed and sworn to at Washington in the District of Columbia this 25th day of September, 1951, before me, the Acting General Counsel of the Immigration and Naturalization Service, United States Department of Justice, authorized by Section 60.26 of Title 8 of the Code of Federal Regulations to administer oaths.

(Signed) Albert E. Reitzel, Acting General Counsel.

[fol. 1] IN UNITED STATES DISTRICT COURT

ANSWER TO COMPLAINT—Filed Aug. 25, 1952

Now comes Guss Polites, by his attorneys, Goodman, Crockett, Eden and Robb, and in answer to the Complaint filed herein, says:

1. Defendant admits the allegations contained in Paragraph 1 of the Complaint.

2. Defendant admits the allegations contained in Paragraph 2 of the Complaint, except that his present address is 5258 Calhoun, Dearborn, Michigan.

3. Defendant admits the allegations contained in Paragraph 3 of the Complaint.

4. Answering Paragraph 4, defendant has no present recollection of the alleged interview or the questions or answers allegedly made therein, and therefore denies the allegations contained therein.

5. Defendant denies the relevancy or materiality of the allegations contained in Paragraph 5, and moves that said paragraph be stricken from the Complaint.

6. Answering Paragraph 6, defendant admits that he took the oath of allegiance to the United States in open court on April 6, 1942, and that he was granted his citizenship on said date by the United States District Court for the Eastern District of Michigan in Detroit. Defendant has no knowledge as to the matters relied upon by the United States District Court in granting such citizenship, and therefore denies said allegations. Defendant denies that his registration under the Alien Registration Act of 1940 or any statements he may have made therein were presented [fol. m] to said Court or were properly a part of the proceedings before it, or that they were relied upon by said Court in granting his citizenships. Wherefore, defendant moves that said allegations with respect to his alien registration be stricken from the Complaint.

7. Answering Paragraph 7, defendant denies the allegations contained therein. Defendant further denies that any statements or representations made in his Alien Registration form are relevant or material, and moves that the allegations with respect thereto be stricken.

8. Defendant denies the allegations contained in Paragraph 8 of the Complaint.

9. Answering Paragraph 9 of the Complaint, defendant neither admits nor denies the allegations with respect to whether the United States of America instituted this proceeding upon the certificate of Reuben Speiser, having no knowledge thereof, and leaves plaintiff to its proofs. Defendant shows that said certificate and affidavit is based upon hearsay, and does not correctly set forth the facts, but avers that said certificate is not properly a part of the complaint and moves that said certificate be stricken.

10. Defendant denies the allegations contained in Paragraph 10 of the Complaint.

Further answering said Complaint, defendant avers that Sections 305, 307(a), and 335(a) of the Nationality Act of 1940, upon which said Complaint is based, on its face and as applied to this defendant by the plaintiff, deprived defendant of rights guaranteed to him under the First and Fifth Amendments to the Federal Constitution, and are [fol. n] therefore unconstitutional.

Further answering said Complaint, defendant shows that the judgment whereby said order of admission to citizenship and Certificate of Naturalization was issued, is a final judgment, from which no appeal was taken, that said judgment is *res judicata* to the issues raised herein; that said judgment may not be attacked in these proceedings; that the allegations in this Complaint are not sufficient upon which to reopen said judgment and to set aside said order.

Defendant therefore denies that plaintiff is entitled to any relief whatsoever in the premises and moves that the complaint be dismissed.

Goodman, Crockett, Eden & Robb, Attorneys for defendant, 3220 Cadillac Tower, Detroit 26, Michigan, Woodward 3-6268. By: Ernest Goodman.

Dated: August 22, 1952

[61.6]

EXHIBIT No. 1

TRIPPLICATE
(To accompany
monthly report on
Form N-4)

UNITED STATES OF AMERICA
PETITION FOR NATURALIZATION

No.

[Of a Married Person, under Sec. 310(a) or (b), 311 or 312, of the Nationality Act of 1940 (54 Stat. 1144-1145)]

To the Honorable the District Court of United States at Detroit, Michigan.

(1) My full, true, and correct name is Constantino Polites.

(2) My present place of residence is 1117 Reed Place, Detroit, Mich. My occupation is laborer.

(3) I am 41 years old. (5) I was born on Sept. 24, 1900 in Samos, Greece.

(6) My personal description is as follows: Sex M, color Brn, complexion Med., color of eyes Brown, color of hair Brown, height 5 inches, weight 150 pounds, visible distinctive marks None, race Greek, present nationality Greece.

(7) I am married, the name of my wife or husband is Mary. We were married on Aug. 30, 1930 at Detroit Michigan. He or she was born at Cleveland, Ohio on Apr. 9, 1918.

I entered the United States at Birth or at _____ on _____ and was naturalized on _____ at _____.

Article No. _____ or became a citizen by _____.
(7a) (If petition is filed under Section 311, Nationality Act of 1940) I have resided in the United States in marital union with my United States citizen spouse for at least 1 year immediately preceding the date of filing this petition for naturalization.
(7b) (If petition is filed under Section 312, Nationality Act of 1940) My husband or wife is a citizen of the United States. It is the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General of the United States, or an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof, and such husband or wife is regularly stationed abroad in such employment. I intend to good faith to take up residence within the United States immediately upon the termination of such employment abroad.

(8) I have 3 children, and the name, sex, date and place of birth, and present place of residence of each of said children who is living, are as follows:
Ursula July 18, 1931 Detroit, Mich with me
Melachrine Mar. 20, 1936 _____

(9) My last place of foreign residence was Samos, Greece. (10) I emigrated to the United States from Greece.
Italy (11) My lawful entry for permanent residence in the United States was at Boston, Massachusetts under the name Constantino Polites on Sept. 20, 1916 at St. Seattle as shown by the certificate of my arrival attached to this petition.

(12) Have my lawful entry for permanent residence in the United States been absent from the United States, for a period or periods of 6 months or longer, as follows:

DEPARTED FROM THE UNITED STATES			RETURNED TO THE UNITED STATES		
PORT	DATE (Month, day, year)	REASON OR OTHER REASON OF DEPARTURE	PORT	DATE (Month, day, year)	REASON OR OTHER REASON OF DEPARTURE

(13) (Declaration of intention not required) (14) It is my intention to good faith to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of which or which at this time I am a subject or citizen, and it is my intention to reside permanently in the United States. (15a) I am not, and have not been for the period of at least 10 years immediately preceding the date of this petition, an anarchist, nor a believer in the unlawful damage, injury, or destruction of property, or sabotage, nor a distributor in or operator of a business, nor a member of or affiliated with any organization or body of persons teaching distributed in or operative to organized government. (15b) I am able to speak the English language (unless physically unable to do so). (16) I am, and have been during all of the periods required by law, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. (17) I have resided continuously in the United States of America for the term of 1 year, as immediately preceding the date of this petition, to wit, since Sept. 20, 1916. (18) I have not heretofore made petition for naturalization.

Number _____ of _____ in the _____ of _____.

Court, and such petition was dismissed or denied by that Court for the following reasons and means, to wit:

(19) Attached hereto and made a part of this, my petition for naturalization, are a certificate of arrival from the Immigration and Naturalization Service of my said lawful entry into the United States for permanent residence (if such certificate of arrival be required by the naturalization law), and the affidavits of at least two verifying witnesses required by law.

(21) Wherefore, I, your petitioner for naturalization, pray that I may be admitted a citizen of the United States of America, and that my name be changed to _____.

(22) I, solemnly petition, do hereby certify that I have the contents of this petition for naturalization subscribed by me, that I believe them to be true, and that this petition is signed by me with my full, true name: SO HELP ME GOD.

1-10-1940

Constantino Polites

Palites, Constantine.

~~WITHDRAWN OF LUNDGREN~~

Change to
Gas. 70 Ltrs

155913

My report to **George Spence** (NY) transmitted to
regarding **690 Algonquin Ave., Detroit, Mich.**

Dry steamer

My name is **Christ Hallen** my occupation is
(please do) **1941-Broadway, Detroit, Mich** (date of report)

Costs

1 was a citizen of the United States of America. I have previously been and have been occupied in the United States with

the government named in the petition for naturalization of which this affidavit is a part. Year 1920

Dec. 1, 1944

I, James Earl Ray, do hereby certify that the statements of fact I have made in this affidavit of the position for non-gratification submitted by me are true to the best of my knowledge and belief. **HELP MR. GOD**

Subscribed and sworn to before me by the above named petitioner and witnesses, in the respective terms of each statute in said petition and affidavit, in the office of the Court of said Court at Detroit, Michigan this 6th day of October A.D. 1941. I hereby certify that I am
J. Arthur Mc
Court Clerk, my Seal 6-10-41 attached to, and is a part of this petition on this date.

Greece

FILED
 3-24-42
 To
 Grant
 Attorney General
 APR 6 1942

RESULT OF EXAMINATION				
Is	True	Is	Revised	
Is	False	Is	Revised	
Is	True	Is	Revised	

[illegible][illegible]

Recommender of preliminary candidate 2/N 8/1 wife
 Recommender of designated candidate R/T: Mager 8/1: Winter/D
 Has Representative Ranges? (and N) 520/503 additional to see the law
 Publisher and above a genuine means by me on 10-6-41
 News claimed Free a USC 10-5-41
1st married 1923 Warren, O
 Letter from Prothro noting 2's et al. 10-5-41

[illegible]

EXHIBIT No. 2

Form A-1014
DEPARTMENT OF LABOR
BUREAU OF NATURALIZATION SERVICEAPPLICATION FOR A CERTIFICATE OF ARRIVAL
and

B 193435

PRELIMINARY FORM FOR PETITION FOR NATURALIZATION

In ascertaining records of arrival:

RECORDS EXAMINED

RECORD FOUND

Order _____
Books _____
etc. _____Place BOSTON, MASS.
Name CONSTANTINE POLITES
Date Sept. 20, 1916
Manner PassengerForm 100-In. in lieu of
certificate of arrival on
application

THE APPLICANT: Do not write above this line. Read carefully and follow the instructions on last page hereof.

Take or mail this application and your money order to:

NATURALIZATION AND NATURALIZATION SERVICE

139 New Federal Building,

Detroit, Mich.

Date

198

Constantine Polites residing at 1197 Reed Place
Detroit, Mich. Court at Detroit, Mich.
 I submit herewith a statement of facts to be used in filing such petition, two photographs of me, each of
 have signed, and my declaration of intention (first paper), if one is required.

Instructions on page 4 heretofore, paragraph entitled "Money Order." If you are not exempt therefrom you must
 secure a money order in payment for a certificate of arrival and fill in the blank below:

I hereby apply for a certificate of arrival showing my lawful entry into the United States for permanent residence, and inclose
 money order No. _____ in the sum of \$2.50 made payable to the order of the "Commissioner of Immigration
 Naturalization, Washington, D.C.," in payment for the certificate of my arrival.

I arrived in the United States through the port of Boston, Mass.
 the name of Constantine Polites (1) Sept. 20, 1916
 (2) 1916

Additional facts to aid in locating a record of my arrival:

I have no another name in this country than that given above. (If so) It was

and that name (or names) was

The full name of the person shown on my steamship ticket was Constantine Polites Sept. 24, 1916I was born in GreeceMy father's full name is Alcibiades PolitesMy mother's maiden name was Elizabeth Morris

If married woman: My maiden name was

My last foreign residence was Perth, ScotlandThe place where I took the ship or train which landed me in the United States was Napier, ScotlandThe vessel on which I came to this country was bought at Perth, ScotlandMy arrival by ship: Name of steamship line was White Star Line

I arrived as a passenger, stevedore, seaman, member of crew, or otherwise

I traveled on (as immigration visa, a passport, or permit to reenter)

Original Immigrant Identification Card No.

Is hereto attached. If not herewith, it is because

I don't remember

I paid head tax at Boston, Mass. on Sept. 20, 1916I was examined by United States immigration officers at Boston, Mass.

I am (married, single, widowed, and give the circumstances of your country)

The person in the United States to whom I was coming was John MorrisThe place in the United States to which I was going was Youngstown, Ohio

The names of some of the passengers or other persons I traveled with and their relationship to me, if any, are

John Morris, Alcibiades PolitesI previously in the United States from 1916 to 1940

[Vol. 1]

EXHIBIT No. 2

2

I have set forth below my answer to the following questions asked of me:

1. Have you been absent from the United States since the date of your arrival as stated on page 1 of this form? *No*
 If so, state month and year you left _____; month and year you returned _____
 To what country did you go? _____ For what reason? _____
 Is this the only time you have been out of the United States? _____
 If not, give full particulars as to other absences _____

2. In what places in the United States have you resided?
Warren Ohio From *Oct 1916* to *Febr. 1925*
Detroit Mich From *1925* to *date 1940*

3. During the year 1924-1925 I was in *Warren, Ohio*
Silver Top Lake Co. Detroit Mich *June 1946 to date*
Trouble Street Warren Ohio *1916 to 1919*
Gordon Baking Co. Detroit, Mich *1915 to 1928*
Consolidated Baking Co. Detroit Mich *1929 to 1931*

4. Do you understand the principles of government of the United States? *yes*
 5. Do you fully believe in the form of government of the United States? *yes*
 6. Are you ready to answer questions as to the principles and form of government of the United States? *yes*
 What have you done to prepare yourself for an examination on the government of the United States? *myself*

7. Have you read the following oath of allegiance? *yes*
 I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to *King George* of whom (which) I have heretofore been a subject (or citizen); that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So Help me God.

- Are you willing to take this oath in becoming a citizen? *yes*
 8. If necessary, are you willing to take up arms in defense of this country? *yes*
 Did you claim exemption from the draft during the World War because you were an alien? *Am*
 Did you surrender your declaration (first paper) at that time? *I don't have any*
 9. If not now married, have you ever been married? *yes* Are you divorced? *no*
 Are you a believer in the practice of polygamy? *no*
 10. Are you a believer in anarchy? *no* Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country? *no*

11. Have you ever been an inmate of an insane asylum? *no*
 12. Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or regulation? *no* If so, give full particulars *2-3 parking - no bad title*

13. (a) In what place in the United States did you meet for the first time your first witness named on the opposite page?
Warren Mich
 How often have you seen this witness each month since the date you first met him (her)? *every day*
 At what places? *4439 M. Street St. and 2303 E. Jefferson Detroit Mich*
 (b) In what place in the United States did you meet for the first time your second witness named on the opposite page?
Detroit Mich
 How often have you seen this witness each month since the date you first met him (her)? *every week*
 At what places? *5130 30th Detroit Mich*

I certify that all the statements made by me in this application and form are true to the best of my knowledge and belief.

No 930407

1117 Reed Place Detroit Mich

U.S.I

EXHIBIT No. 2

File No.
 First Hearing MAY 20 1941
 Second Hearing SEP 5 1941

155003

No. 8 193435

STATEMENT OF FACTS TO BE USED IN FILING MY PETITION FOR NATURALIZATION

My name is Mr. Constantine Petros Polites
 My present residence is 1117 Reed place Detroit, Wayne Mich
 My occupation is Laborer
 I was born in Samos Greece on Sept 24 1909 My race is Greek
 I declared my intention to become a citizen (first paper) on 310 (W) Detroit 1940
 in the Court of at
 I am Yes married. The name of my wife or husband is Mary C. Polites
 We were married on Aug 30 1930 at Detroit Mich
 She or he was born at Flawland Ohio on Sept 5 1912
 Arrived in the United States at WTP on for permanent residence, and now resides at naturalized
 and certificate No. issued

I have 4 children, whose names, dates and places of birth, and places of residence are as follows:
 NAME DATE AND PLACE OF BIRTH Now Residing at
Uranis C. Polites July 18 1931 Detroit, Mich Detroit W/D
Melabrine C. Polites March 20 1936 Detroit Mich Detroit W/P

My last foreign residence was Athens & Smyrna Greece
 The place where I took the ship or train which landed me in the United States was Athens Greece
 The foreign country of which I am now a subject or citizen is Greece
 I am Yes speak English.
 I have resided continuously in the United States since 1916 to 1940 Sept 20 1916
 I have resided continuously in the county where I now live since 1929 Oct 1929
 I have never previously made petition for naturalization (second paper). If so, it was No. made in the Court at on and was not granted because

If you wish to have your name changed, give full name you desire Joseph Petros Guss Polites

(Give names, occupations, and addresses of two citizens you expect to bring with you as witnesses when you appear for examination to file your petition. These witnesses must have personal knowledge of your residence in the county at least, and of your character and other qualifications. A foreign-born witness must bring proof of his citizenship.)

(1st) John M. Melitzakis Restaurant Keeper
 residing at 633 1/2 Michigan St Detroit, Mich

(2nd) Thomas M. Melitzakis Bakery Shop Keeper
 residing at 530 1/2 Street Detroit, Mich

I declare that the above statement of facts has been read by me and that the statement is true to the best of my knowledge and belief.
George Spinos 698 Sheridan St - Dry Cleaner
James Polites

NOTE - Have you enclosed (if required) -
 DECLARATION OF INTENTION.
 IMMIGRANT IDENTIFICATION CARD.
 TWO PHOTOGRAPHS OF YOURSELF.
 MONEY ORDER FOR \$2.50.

Witness: 10/1/40

1117 Reed Place Detroit, Mich
 # 107741 11

EXHIBIT No. 2

INSTRUCTIONS TO THE APPLICANT

Pages 1, 2, and 3 of this form must be completely filled out (preferably on a typewriter)

Immigrant Identification Card.—Every alien who entered the United States for permanent residence on the basis of an Immigration visa on or after July 1, 1928, should be in possession of an immigrant identification card bearing a number in red ink. If you arrived on or after the above date, you must attach such card to this application, inserting the number thereof in the appropriate blank space on the first page of this form. If you arrived on or after July 1, 1928, and you do not have an immigrant identification card, either because it is lost or destroyed, or you did not receive such card, you should state the facts in Statement No. 12 on the first page.

Photographs.—You are required to send with this application two photographs of yourself taken within 30 days of the date of this application. These photographs must be 2 by 2 inches in size, must not be pasted on a card or mounted in any other way, must be on this paper, have a light background, and clearly show a front view of your face without hat. Snapshots, group, or full length portraits will not be accepted. Both of these photographs must be signed by you on the margin and not on the face or the clothing.

Money Order.—If you are not within one of the classifications named below, you must secure a money order in the sum of \$2.50, payable to the order of the "Commissioner of Immigration and Naturalization, Washington, D. C." This money order, which is in payment for the issuance of a certificate of your arrival in the United States, must be attached to this application when you send or take it to the immigration and naturalization office at the address given on the first page of this form. You are not required to send a money order if (1) your arrival occurred on or before June 29, 1906; or (2) your declaration of intention (first paper) is dated on or after July 1, 1929; or (3) you have heretofore filed a petition for naturalization after July 1, 1929; or (4) you are otherwise exempted by law from the requirement for a certificate of arrival.

Date of Your Arrival.—If you do not know the exact date of your arrival in the United States, or the name of the vessel or port, and you cannot secure this information by consulting your family or friends who came over with you, give the facts of your arrival as you remember them in the appropriate blank spaces on the first page of this form. If you have a passport, ship's card, or baggage labels, they may help you to answer these questions.

Race and Nationality.—In furnishing information as to your race in Statement No. 3, page 2, "race" is to be determined from the original stock or blood of your ancestors and the language you speak, as distinguished from "nationality", which means the country of which you are a citizen or subject. For instance, a person may be of French blood or stock but owe allegiance to Great Britain. In that case "race" would be French and "nationality" British. For your information there follows a partial list of races or peoples:

Albanian.	Filipino.	Magyar.	Serbian.
Armenian.	Finnish.	Manx.	Slovak.
Belgian.	Flemish.	Montenegrin.	Slovenian.
Bosnian.	French.	Moravian.	Spanish.
Bulgarian.	German.	Negro.	Spanish American.
Chinese.	Greek.	Pacific Islander.	Syrian.
Croatian.	Hebrew.	Polish.	Turkish.
Cuban.	Hercegovinian.	Portuguese.	Ukrainian.
Dalmatian.	Irish.	Rumanian.	Welsh.
Dutch.	Italian.	Russian.	West Indian (other than Cuban).
East Indian.	Japanese.	Ruthenian (Rusniak).	
English.	Korean.	Scandinavian (Norwegians, Danes, and Swedes).	
Estonian.	Latvian.	Scotch.	
	Lithuanian.		

The term "Cuban" refers to the Cuban people (not Negroes); "West Indian" refers to the people of the West Indies other than either Cubans or Negroes; "Negro" refers to the African black, whether coming from Cuba or other islands of the West Indies, North or South America, Europe, or Africa. Any alien with admixture of blood of the African Negro will be classified as "Negro."

PENALTY FOR FALSELY SWEARING IN NATURALIZATION CASES

Wherever, in any proceeding under or by virtue of any law relating to the naturalization of aliens, shall knowingly swear falsely in any case where an oath is made or affidavit taken, shall be fined not more than one thousand dollars and imprisoned not more than 5 years. (35 Stat. 1103; U. S. C., t. 18, sec. 142.)

RESULT OF EXAMINATION

TO THE APPLICANT—Do not write on these lines

Examiner

[fols. 1-3] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF MICHIGAN, SOUTHERN DIVISION

Civil Action No. 11,820

UNITED STATES OF AMERICA, Plaintiff

v.

GUSS POLITES, Defendant

Excerpts from Transcript of Proceedings

Transcript of proceedings in the above entitled cause before Hon. Frank A. Picard, District Judge, at Detroit, Michigan, on Thursday, July 16, 1953, and subsequent dates indicated.

APPEARANCES:

Dwight Hamborsky, Assistant United States Attorney, and Joseph Sureck, Appearing on behalf of the United States.

Ernest Goodman, 3220 Cadillac Tower, Detroit 26, Michigan, Appearing on behalf of the Defendant.

[fol. 4]

Detroit, Michigan.
Thursday, July 16, 1953.
9:00 o'clock A. M.

PROCEEDINGS

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: You may proceed. United States versus Guss Polites.

Mr. Sureck: Polites, I understand.

Mr. Goodman: Defendant.

Mr. Sureck: Will your Honor bear with the Government for a minute. Mr. Hamborsky and all the witnesses are on the way downstairs.

The Court: What is it?

Mr. Sureck: Mr. Hamborsky and all the witnesses are on the way downstairs. I told Mr. Duffy to hold up until we came down.

The Court: I told you we were ready to go ahead with the case.

Mr. Sureck: I know you did, but we were upstairs, your Honor.

(Discussion off the record.)

(Mr. Hamborsky entered the court room at this point.)

The Court: What is the claim here? Wait a minute. I have got it.

[fol. 5] Mr. Hamborsky: Yes, sir. I will make an opening statement.

The Court: The claim is that less than ten years before his naturalization he believed in and belonged to an organization that taught and advocated the overthrow of the United States Government; he was and had been an anarchist.

You have to have some definition of that term. I don't know what an anarchist is or what he isn't any more. I know that people were considered anarchists twenty-five years ago who are not considered that any more.

He was a member and believed in unlawful damage. Testified under oath on October 6th, 1941, he was not a believer in anarchy; he did not belong to and was not associated with any organization which teaches and advocates anarchy.

All right.

Mr. Hamborsky: At this time, your Honor, I would like to make an opening statement on behalf of the Government in this particular matter, in that we rely on two grounds, two basic grounds for cancellation of the defendant's, this man's, citizenship.

Throughout the testimony, and as we develop our case, the basic ground, first, is on the ground of fraud in that [fol. 6] the defendant concealed from the naturalization examiner and from the court the fact that he was a member of the Communist Party:

The Court: At that time?

Mr. Hamborsky: At that time.

Mr. Goodman: This was when?

Mr. Hamborsky: 1941, October 6th, was when he filed his petition for naturalization. He was naturalized approximately the next year, 1942. In other words, when he filed his petition he makes that same statement, and that was October 6th, 1941.

The Court: Was that in writing?

Mr. Hamborsky: Yes; it is.

The Court: Made a statement in writing he was not a Communist?

Mr. Hamborsky: Well, he answered "No" to a question whether or not he was a member of an organization that advocated the overthrow of the Government by force and violence.

The Court: All right.

Mr. Hamborsky: Or words to that effect. We will bring that out in the testimony.

The Court: All right.

Mr. Hamborsky: And the other fact that is relied upon [Vol. 7] is related to the first, but is based upon the pure and simple ground of illegality, is the fact that he belonged to an organization at the time he was naturalized which was not allowed under the naturalization proceedings as then existing.

The Court: That was what? Give me that again, please.

Mr. Hamborsky: The defendant—

The Court: (Interposing) The first one was that he—

Mr. Hamborsky: Well, that—

The Court: (Continuing) —it is alleged, was a member of an organization advocating the overthrow of the Government of the United States. That is the first one.

Mr. Hamborsky: The fact he concealed it.

The Court: He concealed it, then. Didn't you say he actually answered a question in the application to that effect?

Mr. Hamborsky: He answered it "No".

The Court: Well, that isn't concealing. That is lying about it. I don't see where you say—if he concealed it—well, it is both concealing and it is more than concealing. It is an outright untruth, if that is true. You ask him the question, and he says "No".

[fol. 8] Well, we used to call that lying. Now I guess you call it falsification or an untruth. That is the first one.

Mr. Hamborsky: That is the first one.

The Court: All right. And the second one?

Mr. Hamborsky: The second one is that under the Act as then existing, in other words, in violation of Section 305 of Title 8 of the Code, the mere fact that he was a member of the Communist Party prevented him from procuring citizenship, and it was illegal for him to obtain citizenship.

The Court: Wouldn't the other also? If he had said "Yes" to the other, wouldn't he have been prevented from it? I don't see the difference between them.

Mr. Hamborsky: Well, the difference is merely this—

The Court: (Interposing) One is that he told an untruth, and the other is if he had told the truth he couldn't have been admitted. Is that right?

Mr. Sureck: Your Honor—

The Court: (Interposing) I want to get this straight, because, you know from my experience with these cases there is a very narrow line here as to the claims of the Government, and sometimes I don't always get it straight, or most judges don't either, so I guess that is all right.

[fol. 9] Mr. Sureck: Let me say this, that the courts have had trouble distinguishing these two arguments.

The Court: You are telling me that?

Mr. Sureck: Between illegality and fraud.

The Court: I could have told you that, Mr. Sureck.

Mr. Sureck: Well, I have been researching the law, your Honor. However, I do believe that the distinction between the first ground we rely on, the ground of fraud, is the concealment; the knowledge that he was a member and the fact that he concealed it.

The Court: Well, he lied about it.

Mr. Sureck: That is right.

The Court: All right. He said "No".—Now, I want to get that straight. He said "No". He said, "I am not a member of any organization." He said "No". Now, the second part is that he was a member and that disqualified him from citizenship.

Mr. Sureck: Right.

The Court: In other words—

Mr. Sureck: (Interposing) He was in a class.

The Court: In other words, if he hadn't lied about it he would have been refused citizenship; he never would have been admitted. That is number one.

Mr. Sureck: That is right.

The Court: But, having lied, he didn't get by [fol. 10] with it, because he should have been refused any way, because he was a member.

— Mr. Sureck: Right.

The Court: All right. Is that your understanding of the issue, Mr. Goodman?

Wait a minute, please. I will give you a chance. I just want to know whether the issue is admitted by you.

Mr. Goodman: Well, the Government, of course, states its own issue. I understand what it has stated.

The Court: Well, you ought to know whether that is the real issue, or whether you claim that he was misled by fraud of the Government. I don't know what you claim.

Mr. Goodman: Well, if I were to suggest any modification of the issue as stated, I would suggest a somewhat different statement of the first issue. That he, they say, was asked "Were you a member of the Communist Party?" He was never asked that, apparently.

The Court: No; he didn't say that. Of any organization.

Mr. Goodman: That is right. He was asked, "Were you a member of an organization which advocated the overthrow of the Government," and the Government now asserts that the Communist Party was such an organization, that he knew it was such an organization, and that, knowing it was, he concealed it or should have stated it [fol. 11] when he did not. Now, that is the only modification that I would suggest. They must—

The Court: (Interposing) Is the knowledge?

Mr. Goodman: They must assert, I believe, in their very statement of the issue, that they can only claim he lied if he knew. If he didn't know or didn't believe it is so, why, there would be no lying. They may still claim it was so, anyway, and they have a right to take away his citizenship.

The Court: Whether he knew it or whether he did not?

Mr. Goodman: I think that would be an element in their position.

The Court: Is that the claim of the Government here?

Mr. Hamborsky: Well, the Government's claim does not go so far as the defendant's counsel, in that he knew.

The Court: Well, now—

Mr. Hamborsky: (Interposing) Of his own knowledge.

The Court: Is it the government's claim—let me understand this. Is it the government's claim that whether he knew or not, being a member of the Communist Party he was ineligible for citizenship?

[fol. 12] Mr. Hamborsky: That is correct.

The Court: Well, then—

Mr. Sureck: (Interposing) Your Honor, on the question of illegality, knowledge of the aims and purposes of the Communist Party is not necessary. Merely membership in the organization—

The Court: (Interposing) At that time.

Mr. Sureck: Yes. (Continuing) —is sufficient. But when it comes to the question of fraud, he would have to know or indicate that he had knowledge that it was an organization that advocated the overthrow.

The Court: Oh, yes. Surely. All right.

Mr. Hamborsky: At this time—

The Court: (Interposing) All right.

Mr. Hamborsky: At this time, the Government would like to call the first witness, Guss Polites.

The Court: The defendant?

Mr. Hamborsky: Under Rule 43 (b).

The Court: All right.

[fol. 13] GUSS POLITES, the defendant herein, called as witness for cross-examination by the Government, having been first duly sworn by the Clerk, testified as follows:

Cross-examination.

By Mr. Hamborsky:

The Court: What is that section?

Mr. Hamborsky: Title 28. Title 28.

The Court: Title 28?

Mr. Hamborsky: Yes.

The Court: What section?

Mr. Hamborsky: Rule 43 (b).

The Court: What section of Title 28?

Hamborsky: It is a rule.

Mr. Sureck: Rules of Civil Procedure. It is not a section of the statute. It is the rule of the court.

The Court: What rule?

Mr. Sureck: Rule 43. Rule 43 sub-section (a).

Mr. Hamborsky: (b) and (a).

The Court: All right. You may proceed.

(Short intermission.)

The Court: Oh, I didn't mean that. No. I meant the title of the Act involved here. I thought you said Title 8. [fol. 14] Mr. Hamborsky: Oh, you mean on which the petition is based?

The Court: Yes.

Mr. Hamborsky: That is Title 8.

The Court: Title 8.

Mr. Hamborsky: Yes. Of the United States Code. Sections 705 and 305.

The Court: What is the other section?

Mr. Hamborsky: They are both Title 8. One is 305 and the other is 705.

The Court: All right.

(Short intermission.)

The Court: All right, you may proceed.

(Discussion off the record.)

The Court: Go ahead.

By Mr. Hamborsky:

Q. What is your name, sir?

A. Guss.

Q. Guss what?

A. Polites.

Q. And have you ever been known by any other name than Guss?

A. No.

Q. Have you ever been known as Constantine Polites?

A. Yes; in Greek.

Q. And what was your name prior to naturalization, Mr. Polites?

A. Guss.

[fol. 15] Q. Was that spelled "G-u-s"?

A. G-u-s.

Q. Was it also spelled G-u-s-t?

A. Sometimes they used a "t". But I usually use "s". Most of my affairs it is signed with "t".

Q. Did sometimes you use G-u- double -s? G-u-s-s, also?

A. Yes.

Mr. Hamborsky: Now, Mr. Reporter, will you mark these documents?

(Whereupon petition for naturalization was marked by the Reporter for identification as Government's Exhibit No. 1.)

(Whereupon certificate of arrival and preliminary form of petition for naturalization was marked by the Reporter for identification as Government's Exhibit No. 2.)

(Whereupon alien registration form was marked by the Reporter for identification as Government's Exhibit No. 3.)

By Mr. Hamborsky.

Q. I show you Government's proposed Exhibit 1 and ask you if that is your signature?

A. Yes.

Q. Now, you stated that that is your signature. Do you recognize that document? Do you know what it is? Is that the petition that you filed when you applied for naturalization?

[fol. 16] A. Yes.

OFFER IN EVIDENCE

Mr. Hamborsky: At this time, I would like to offer Government's Exhibit 1, the petition for naturalization of the defendant Guss Polites, in evidence.

The Court: Have you marked it for identification?

Mr. Hamborsky: I have.

The Court: Any objection?

Mr. Goodman: I am just looking at them. Counsel was opposed to have given me a copy of this earlier, but it doesn't seem to be an exact copy.

The Court: I can't find either 305 or 705 in this.

Mr. Fordell: 705, your Honor.

The Court: Any objection, Mr. Goodman?

Mr. Goodman: I have no objection, except at the pretrial

stage I received what was supposed to be a copy of that, but it was an incomplete copy.

The Court: Have you been misled?

Mr. Goodman: No; except I would like to get the other part of the exhibit.

The Court: That is all right. You will get it.

Mr. Goodman: I have no objection.

The Court: All right. It may be received.

[fol. 17] By Mr. Hamborsky:

Q. Now, Mr. Polites, I am going to show you—

The Court: (Interposing) Now, just a minute, please. It is received.

Mr. Hamborsky: Well—

The Court: (Interposing) I know nothing of the contents.

Mr. Hamborsky: Yes. I thought for the better continuity we would introduce the exhibits that we can and then read them together, because they are a continuing process from the time he—

The Court: (Interposing) All right. But right now let me say that that exhibit is received, and it may be read in whole or in part—it is considered read into the record right now, and may be read in whole or in part by counsel for both sides or by the court. It won't be necessary for you to read it all; because I suppose there are a lot of questions there that are really immaterial for the issues in this case.

Mr. Hamborsky: That is right. We wanted—the Government intended to point out the ones that we felt were pertinent.

The Court: But it is all in; don't forget that.

Mr. Hamborsky: Yes.

By Mr. Hamborsky:

Q. I show you the Government's proposed Exhibit 2 [fol. 18] which is the application for a certificate of arrival and preliminary form of petition for naturalization and ask you if that is not your signature, Mr. Polites?

A. Yes.

Q. And also on the second page of this it shows your signature?

A. Yes.

Q. And I hand this paper to you and ask you if you know what that is. (Handing Exhibit 2 to the witness.) Is that your application for a certificate of arrival and preliminary form for petition for naturalization?

The Court: Has it his name on it?

Mr. Hamborsky: Yes.

The Court: It would be simpler for him if you ask him if that is his signature.

Mr. Goodman: If counsel—

The Court: (Interposing) What is that, please?

Mr. Goodman: If counsel will show it to me, I probably won't object to it anyway.

The Court: As a matter of fact, he wouldn't understand the rest of it.

Mr. Goodman: I have no objection, your Honor.

The Court: It may be received.

By Mr. Hamborsky:

Q. I at this time show you the Government's proposed Exhibit 3 and ask you—which is an alien registration form, and ask you to state if that is your signature?

A. Yes.

[fol. 19] Mr. Goodman: I am going to object to this document, your Honor, on the ground, first, that it is not a part of the naturalization proceeding, and, therefore, is not properly a basis for any claim of fraud or illegality with respect to a denaturalization proceeding. I should state, in support of that proposition, that this document is dated December, 1940, which precedes any of the documents regarding the defendant's naturalization, even the very first one, and, in my answer, I moved that this be stricken as not being properly a part of the pleadings.

The Court: May I see it, please?

(Document handed to the Court.)

Mr. Goodman: I renew my motion at this time and I object to the introduction of the document.

Mr. Hamborsky: On behalf of the Government, I would—

The Court: (Interposing) Just a minute, please. This is the alien registration form, and your main objection is that it is not part of the naturalization proceedings?

Mr. Goodman: Not part of the proceedings; hasn't been shown to be part of it. By law it is not a part of it. It precedes it, and may not be considered by this court in an application to denaturalize this man's citizenship.

[fol. 20] The Court: Have you got any authority on that, Mr. Goodman?

Mr. Goodman: No; it is just——

The Court: (Interposing) Suppose he had written a letter, just a plain letter, to somebody where he made damaging statements?

Mr. Goodman: Well, if this is considered as evidence against him on the issue in this case, if that is what the purpose is, then I would say it is immaterial at this point.

The Court: I overrule that.

Mr. Goodman: But the Government doesn't introduce it for that purpose.

The Court: I don't know why it is introduced or for what purpose. They don't restrict themselves.

Mr. Goodman: Well, in their pleadings they rely upon this as a basis for the denaturalization.

The Court: That is part of the evidence. It is only a link in the chain. No, I overrule the objection on that.

I think they could introduce any kind of evidence that would tend to prove any fact in issue—that is, proper evidence, of course.

Mr. Goodman: With respect to relevancy, I also want the record to show I object on the ground it is irrelevant [fol. 21] to the issue.

The Court: The weight of it is something else. The weight of it, I admit, is something else. But the admissibility, I think, is in favor of the Government.

(Short intermission.)

The Court: All right. You may proceed.

Mr. Hamborsky: I would like to have the record show at this time that on the preliminary form for naturalization, for petition for naturalization and application for certificate of arrival, that the defendant, Guss Polites, signed his name "G-u-s-s".

The Court: What real difference does it make? Now, we spent some time about whether the man's name is Gus, or Guss, or Gust. What real difference——

Mr. Hamborsky: (Interposing) The only thing is that each one of these are "Constantine Guss" with a "t" and G-u-s-s.

The Court: What difference does it make?

Mr. Hamborsky: I just want to ask him.

The Court: All right. All right. But this case isn't going to be decided on that issue.

Mr. Hamborsky: I agree, your Honor. I just want to clear the point up.

The Court: Because even the word "Frank" is abused. That is, you can abuse it. Sometimes it is F-r-a-n-c-k. [fol. 22] Sometimes it is F-r-a-n-c. Sometimes F-r-a-n-k. But I guess they get the right man in the end.

Mr. Hamborsky: For the purpose of speeding this up, the court suggested that counsel read the pertinent parts of these—

The Court: (Interposing) All right.

Mr. Hamborsky: (Continuing) —admitted documents.

The Court: And tell what you are reading from.

Mr. Hamborsky: I am reading first from the alien registration statement.

The Court: Alien what? Dated so and so. That is very important here.

Mr. Hamborsky: Alien-Registration form dated December 6th, 1940:

"Question No. 10: I am or have been within the past five years or intend to be engaged in the following activities. In addition to other information, list memberships or activities in clubs, organizations or societies."

The answer is

"None."

"Question 15:—"

The Court: (Interposing) "I am—" Read that again
"or—"

[fol. 23] Mr. Hamborsky: (Continuing reading):

"—have been within the past five years or intend to be engaged in the following activities;—"

And then a semicolon.

"—in addition to other information list memberships or activities in clubs, organizations or societies."

The Court: All right.

Mr. Hamborsky: And the applicant's answer was:

"None".

The Court: All right.

Mr. Hamborsky: (Reading):

"Question 15: Within the past five years, I——"

And then there is a blank space for either "have" or "have not" in which the applicant inserted:

"—have not been affiliated with or active in (a member of, official of, a worker for) organizations, devoted in whole or in part to influencing or furthering the political activities, public relations or public policies of a foreign government."

The Court: May I suggest to the Government that they give me a copy of these exhibits? You have got the blanks. All you have to do is fill them out. Not now. Don't take your time away from this to do that, but so that I can [fol. 24] have the part marked that you have read in court.

Mr. Hamborsky: All right.

The Court: He will take care of it. All right.

Mr. Hamborsky: On the defendant's preliminary form for petition for naturalization dated May 30th, 1940, I am reading Question No. 22.

The Court: May 30th?

Mr. Hamborsky: May 30th, 1940.

The Court: I thought you said, Mr. Goodman, that the other pre-dated his application?

Mr. Goodman: I thought it did.

The Court: One is in December, 1940, and the other is in May of 1940. Or did I get the date wrong?

Mr. Goodman: I was incorrect, then.

The Court: All right.

Mr. Goodman: This application is prior to the alien registration form. I had only obtained a copy of the petition for naturalization which is relied on in the complaint.

The Court: All right.

Mr. Goodman: Which is dated subsequent to that.

The Court: I don't recollect. Do you want to withdraw your objection?

[fol. 25] Mr. Goodman: No. My objection still stands as to the remaining portion of it, which I think is still valid.

The Court: All right.

Mr. Hamborsky: Posing Question 22 in the Government's Exhibit 2:

"Do you understand the principles of government of the United States?"

Defendant's answer is:

"Yes".

"23: Do you fully believe in the form of government of the United States?"

The defendant's answer is:

"Yes".

"24——"

Cross 24. I am reading 25:

"Have you read the following oath of allegiance?"

The answer is:

"Yes".

And the oath is as follows:

"I hereby declare on oath that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to King George II of whom I have [fol. 26] heretofore been a subject or citizen; that I will support and defend the constitution and laws of the United States of America against all enemies foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion, so help me God."

Following the oath, continuing Question 25, is asked:

"Are you willing to take this oath in becoming a citizen?"

The answer is:

"Yes".

Q I am reading Question 28:

"Are you a believer in anarchy?"

The answer is:

"No".

"Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country?"

The answer is:

"No."

I am reading from, now, the Government's proposed— [fol. 27] from the Government's Exhibit 1, which is a petition for naturalization filed October 6th, 1941, Question No. 14:

"It is my intention in good faith to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty of whom or which at this time I am a subject or citizen. And it is my intention to reside permanently in the United States."

Question 15:

"I am not and have not been for the period of at least ten years immediately preceding the date of this petition an anarchist nor a believer in the unlawful damage, injury or destruction of property or sabotage, nor a disbeliever in or opposed to organized government, nor a member or affiliated with any organization or body of persons teaching disbelieve nor opposition to organized government."

The Court: Is that—

Mr. Hamborsky: (Interposing) No. 17.

The Court: Was that oath or clause in effect in 1941?

Mr. Sureck: Effective January 13, 1941, your Honor.

The Court: It was in effect at that time?
[fol. 28] Mr. Sureck: Yes, sir.

The Court: That is changed now, isn't it?

Mr. Sureck: It is no longer the law, your Honor. It has been repealed, but——

The Court: (Interposing) How far back does it go now? Or what is the change now?

Mr. Sureck: Oh, no. It has not been changed. I mean that particular section was repealed, but it has been reinstated almost word for word in the new statute, your Honor.

The Court: It has not been changed?

Mr. Sureck: No, it has not.

The Court: It is the same law?

Mr. Sureck: That is right.

The Court: I was under the impression that some place there was a change in the law. I don't remember how I got that impression. It is all right.

Are all of these exhibits in? I only heard you introduce two.

Mr. Hamborsky: No. Three are in.

The Court: All right.

Mr. Hamborsky: I believe the last one I read was 15. I am now reading 17:

"I am and have been during all of the periods required by law attached to the principles of the constitution of the United States and well disposed to the good order and happiness of the United States."

I will read 22:

"I, the aforesaid petitioner, do swear (affirm) that I know the contents of this petition for naturalization subscribed by me; that the same are true to the best of my own knowledge except as to those matters therein stated to be alleged upon information and belief and as to those matters I believe it to be true, and that this petition is signed by me with my full true name, so help me God."

The name of the defendant appears.

By Mr. Hamborsky:

Q. Now, Mr. Polites, I am going to ask you whether or not during the ten years prior to the date that you filed the petition for naturalization, had you ever been a member of the Communist Party of the United States?

The Court: What is that? Give me that question again, please.

Mr. Hamborsky: Read it.

(Last question read by the Reporter.)

A. I don't understand the question clearly. What do you mean?

Mr. Goodman: Suppose you give the dates.

The Court: You had better give him those dates, now, so that there can be no—when did he file that petition?

[fol. 30] Mr. Hamborsky: October 6th, 1941.

The Court: Guss, between October 6th, 1931, and the day that you filed this petition for citizenship, the question is had you ever been a member of the Communist Party of the United States? That is the question, is it not?

Mr. Hamborsky: Correct.

The Court: Is that a fair statement of the question?

Mr. Goodman: Yes.

The Court: That is the question.

A. Yes, your Honor. I was a member of the Communist Party from 1932 up to 1938.

The Court: I didn't ask you that. The question is not whether you were after that, but—

Mr. Goodman. (Interposing) He said—

The Court: (Continuing)—but between 1931—

Mr. Goodman. (Interposing) He said 1931 to 1938, your Honor.

The Court: I thought you said "1941"?

A. No.

The Court: I am sorry. All right. He did understand it. All right. I am sorry.

By Mr. Hamborsky:

Q. Where did you become a member of the Communist [fol. 31] Party?

A. What do you mean "where"? Here.

Q. In the United States? Where in the United States?

A. Here in Detroit.

Q. When?

A. I don't remember the date, but it was around 1931.

Q. And what unit of the Communist Party did you become a member in?

A. I don't remember the unit.

The Court: What is that?

A. I don't remember the unit.

The Court: I thought you said "union"; but it is "unit".

Mr. Hamborsky: The unit.

The Court: The unit. I don't know whether they are—I am not sufficiently acquainted with them to know whether they call them cells or what they call them.

By Mr. Hamborsky:

Q. Do you know the structure of the Communist Party of the United States, Mr. Polites?

A. That I know of?

Q. The structure?

The Court: How it is built up? How—well, go ahead.

By Mr. Hamborsky:

Q. Do you know how the Communist Party of the United States is formed?

[fol. 32] A. (No response.)

Q. Do you know what a unit is in the Communist Party?

A. Yes.

Q. What is a unit?

A. Unit is a small group.

Q. How many men? Usually?

A. Five, six, seven; all depends.

Q. Five to ten?

A. Yes.

Q. And what are those units called? Are they called street units?

A. Street units.

Q. There are also some factory units?

A. Yes.

Q. Now, do you know what a fraction is?

A. Fraction?

Q. Fraction of the Communist Party?

A. I don't understand the word "fraction". What do you mean, "fraction"?

Q. Mr. Polites, were you ever a member of the Greek Workers Educational League?

A. Yes.

Q. Is that not called a fraction of the Communist Party?

A. No.

Q. Where did you pay dues during the time you were a [fol. 33] member of the Communist Party?

A. The unit.

Q. The unit. What unit?

A. The unit I was a member of, but I don't remember the name of the unit at the time.

Q. You remember the number of the unit?

A. No.

Q. Was it what they called the West Side Unit?

A. East Side. Downtown Unit.

The Court: What is that?

A. Downtown.

The Court: Down what?

A. Downtown.

Mr. Hamborsky. Downtown.

The Court: Oh, Downtown. I got you. Downtown Unit, East Side. You knew what a unit was after all, didn't you? I didn't know that you knew that.

By Mr. Hamborsky:

Q. Were you ever an officer in the Communist Party?

A. Officer? What you mean, officer?

Q. Did you hold any position of responsibility?

A. No.

The Court: Well, let's find out. That may be confusing to anybody. I know if a man takes his job seriously and he is a janitor in a big building he has got a responsible job, according to him. If he didn't, he wouldn't be a good [fol. 34] janitor.

By Mr. Hamborsky:

Q. Were you the organizer of a unit?

A. No.

Q. Were you ever the general secretary of a unit?

A. No.

The Court: Ask him if he had any office at all, whether it is big or little, important or not. Any office at all.

By Mr. Hamborsky:

Q. Did you have any office at all, big or little, in the Communist Party?

A. No.

Q. Your answer is "No" to that question. Where—

The Court: (Interposing) Now, you mean at any time? Not necessarily—you know he might possibly be confused with the idea of the time that he filed his application.

Mr. Hamborsky: Well, I am getting to that.

The Court: All right.

Mr. Hamborsky: That was my next question.

Mr. Goodman: I have assumed, your Honor, all the way through, so that there will be no question on the record, that these questions referred to the period prior to the naturalization.

The Court: From—

Mr. Hamborsky: (Interposing) 1931 to 1941.

[fol. 35] The Court: At the time he mentioned he was a member of the Communist Party, from 1931 to 1938, I think he said.

Mr. Sureck: 1948.

Mr. Goodman: 1938, he said.

The Court: 1938.

Mr. Fordell: 1931 to 1938, he said.

By Mr. Hamborsky:

Q. This question I just asked you I am going to ask you again, Mr. Polites, if during the years 1931, when you first joined the Party, until 1938 when you say you left the Party, were you an officer of any kind, either an officer in the unit or a section or any part of the Party?

A. No.

The Court: He said "No".

Mr. Hamborsky: The answer was "No".

The Court: All right.

By Mr. Hamborsky:

Q. Where did you attend meetings?

A. Where?

Q. Where?

A. I don't remember the places now.

Q. You don't remember one place? Did you ever attend a meeting at the Finnish Hall?

A. Mass meetings, yes.

The Court: May I suggest we find out where he lived and worked at that time?

[fol. 36] Mr. Hamborsky: Okay.

The Court: Because then I will know.

By Mr. Hamborsky:

Q. During 1931 through 1938, where did you live, Mr. Polites?

A. It has been so long I don't remember.

The Court: Did you live in one place?

A. At no permanent place, because I was moving around at the time.

The Court: Can you give us the place where you lived the longest? Did you live in one neighborhood?

A. On Lafayette I was living a long time.

The Court: Lafayette. That is out on the east side, isn't it?

A. Yes.

The Court: And where were you working at that time?

A. At that time, 1931, I was unemployed. I had no job.

The Court: 1931 or the year before? Yes; that is right. I forgot about that. 1931. When did you get a job?

A. I did get a job in 1937.

The Court: 1947?

A. 1937.

The Court: You say 1947?

A. 1937.

[fol. 37] The Court: 1937. I see. What is the matter with my hearing today? You didn't get a job until 1937?

A. Yes; I was unemployed.

The Court: All right. And you lived in the neighborhood of Lafayette out on the east side. That would be near what street? Near what big street?

A. Near Hastings, I think it was. Hastings, St. Antoine.

The Court: What is that please?

(Answer read by the Reporter.)

The Court: Does Hastings cross out there somewhere? Lafayette?

Mr. Hamborsky: That is pretty close in.

The Court: That is pretty close in. That is just a little ways here. I thought you lived way out?

A. Not at that time.

Mr. Hamborsky: He said "Downtown, East Side"?

A. That is where I attended.

The Court: All right. Now we have got the location. He wasn't working, and he lived, to the best of his recollection in the neighborhood of Lafayette and Hastings most of this time, and attended the Finnish Hall for mass meetings.

Mr. Hamborsky: Yes.

The Court: That is what he said, didn't he?

Mr. Hamborsky: Yes, he said mass meetings.

[fol. 38] The Court: Mass meetings of what? Of the Communist Party?

A. That is all kind of meetings.

By Mr. Hamborsky:

Q. There were all kinds of meetings. Were there closed meetings?

A. No.

Q. Do you know what a closed meeting is? Closed meeting of the Communist Party?

The Court: Well, ask him if he attended meetings where the public wasn't invited so that everybody couldn't get in. I think that is what you mean, isn't it?

Mr. Hamborsky: That is exactly what I mean. I wanted him to state if he knew what a closed meeting was.

By Mr. Hamborsky:

Q. Do you know what a closed meeting is, Mr. Polites?

A. Well, his Honor explained it to me. I know now.

Q. Who explained it?

The Court: He said I explained it to him and he knows. Didn't you know before?

A. Not exactly.

The Court: Not exactly. All right.

By Mr. Hamborsky:

Q. Mr. Polites, during this time when you were a member of the Communist Party, did you ever attend any sectional meetings? Did you ever attend any section meetings? [fol. 39] A. Yes, once in a while.

Q. What is a section meeting?

A. Section is a territory of three or four or five or more units.

Q. And is a section meeting a closed meeting?

A. Section meeting?

Q. Yes?

A. Yes.

Q. And that is closed only to Communists?

A. Yes.

Q. Communist Party members?

A. That is right.

The Court: Well, I guess you have got that—

By Mr. Hamborsky, interposing:

Q. Did you—

The Court: (Interposing) I guess you got that twisted. It is open to Communists and closed to outsiders.

By Mr. Hamborsky:

Q. The term "closed meeting" means that it is closed to everyone but a member of the Communist Party; is that correct?

A. (Shrugs shoulders).

Q. You don't know?

The Court: Isn't that what you said before? A closed meeting is where only the Communists can come in?

A. That is right.

The Court: All right. We have got that.

[fol. 40] By Mr. Hamborsky:

Q. When did you first find out what a closed meeting was, Mr. Polites?

A. You want me to put a date?

Q. Yes?

A. I don't remember.

Q. Was it 1931 when you first joined them as a Communist?

A. Well, yes.

Q. Now, did you ever have a Communist membership card?

A. Yes.

Q. What did it look like?

A. Small card.

Q. A small document. Did it have your name on it?

A. Yes.

Q. Would this card be in your possession now?

A. Now?

Q. No, when you were a member of the Communist Party?

A. Yes.

Q. And how did they record the payment of dues in this book?

A. Stamps.

Q. And who would you buy the stamps from?

A. Financial secretary.

Q. Of what?

A. Unit.

Q. The unit?

A. Yes.

[fol. 41] Q. The unit financial secretary gave you the stamps?

A. Yes.

Q. Do you know what was on the stamps?

A. It was a stamp.

Q. It wasn't a United States Government stamp, was it?

A. It was the emblem of the Communist Party.

Q. The hammer and sickle?

A. Yes.

Q. It was on each of these little stamps?

A. Yes.

Q. How often did you pay dues?

A. Every month.

Q. And how often did you attend these closed meetings?

A. Not very often.

Q. Once a week, the unit meetings, Mr. Polites?

A. It was once a week, but I didn't attend them every week.

Q. Did you attend some meeting, either a unit, section or district closed meeting of the Communist Party at least once a week?

A. I don't remember.

Q. Would you want to guess how many times you attended closed meetings of the Communist Party while you were a member?

A. About once a month.

Q. That includes all kinds of meetings?

A. Yes.

[fol. 42] Q. Now, do you know what the Greek Fraction of the Communist Party is?

The Court: The what?

Mr. Hamborsky: Greek fraction.

The Court: G-r-double-e-k?

Mr. Hamborsky: G-r-e-e-k.

The Court: Same thing.

A. Greek Fraction?

Q. Greek Fraction?

A. Yes.

Q. What is the Greek Fraction of the Communist Party?

The Court: You shouldn't have any trouble answering that, unless you tell me it was all those who came from Ireland or something like that. What is the Greek Fraction?

A. Greek Fraction is the Greek communists meeting together.

Q. Are they all members of the Communist Party?

A. Yes.

Q. And was the Greek Workers Educational League the Greek Fraction or a fraction of the Communist Party?

A. No, sir. No, sir.

Q. It wasn't a fraction?

A. No, sir.

Q. What was it?

A. Greek Educational League.

[fol. 43] Q. Do you know what a front is, a front organization?

The Court: Do you want to develop that other?

Mr. Goodman: Well, now——

The Court: (Interposing) Any further? As to just what it was? I don't know what it was.

Mr. Hamborsky: Well——

Mr. Goodman: (Interposing) Let me interpose an objection here, if your Honor please. There is no allegation in the complaint of membership in this Greek Educational League, as he refers to it.

Mr. Hamborsky: He said he was a member.

Mr. Goodman: And it seems to me that is going beyond the issue in this case, to ascertain, as counsel is apparently seeking to do, what the nature of this organization is.

The Court: Well, one of the essentials of the proof of the Government in this case is knowledge, isn't it? Is it not?

Mr. Goodman: Eligibility.

Mr. Hamborsky: We don't contend that far; that a knowledge of ali—a knowledge of what the Communist Party was and that he was a member, yes.

The Court: That is what I say. Knowledge.

Mr. Hamborsky: Yes.

Mr. Goodman: He has already admitted that.

[fol. 44] Mr. Hamborsky: No.

The Court: No. He admitted he was a member of the Communist Party.

Mr. Goodman: And he knew he was.

The Court: What is that?

Mr. Goodman: And he knew that he was. He admitted he knew he was.

The Court: But that isn't the point. The point is, did he know what it stood for at that time, and they have a right to inquire.

Mr. Goodman: Well, I don't object to that question, but the question is about other organizations.

The Court: That is true, is it not, Mr. Hamborsky?

Mr. Hamborsky: Well, your Honor, as far as our second ground, that of illegality——

The Court: (Interposing) Forget the second ground. We are on the fraud.

Mr. Hamborsky: On the fraud, I believe so.

The Court: All right: Now, they have a right to develop anything that would tend to show that this man knew what it stood for:

Mr. Goodman: Well, I have no—

The Court: (Interposing) That is the purpose of this.

[fol. 45] Mr. Goodman: If the purpose is—

The Court: (Interposing) Just a minute until counsel gets through, because the court is—I would like to know whether you gentlemen are agreed on this so that you don't come around afterwards and say, "I didn't understand the court." You can't understand the court if you spend your time talking to each other.

Now, is that agreed, that on this part of the fraud—not the other—the fraud, that there must be knowledge on his part as to what it stands for—as to what the Communist Party stood for?

Mr. Hamborsky: Yes: What the Communist Party stood for.

The Court: That he thought it was a pink sewing circle, that is one thing:

Mr. Fordell: That is right.

The Court: There can be no fraud if a man makes an honest mistake. And it is the contention of the Government, as I take it, at this time, that not only was he a member of the Communist Party, but he admit that, but also he knew or should have known what it stood for.

Mr. Hamborsky: That is right.

The Court: For that purpose, the court will permit the question.

Mr. Goodman: Is that the purpose of the inquiry into [fol. 46] this other organization? What the Communist Party stood for?

Mr. Hamborsky: Well, I am asking him—

The Court: (Interposing) Here is the Educational—just a minute, please. Here is the Greek—what do you call it?

Mr. Hamborsky: Greek Workers Educational—

The Court: (Interposing) Greek Workers Educational League. He said it was not a fraction of the Communist Party. Let's see what it was. I don't know. He may inquire.

By Mr. Hamborsky:

Q. What was the Greek Workers Educational League?

A. The Greek Workers Educational League was educational, to educate the workers how to become better Americans and how to become good union members.

The Court: Union. Not "unit" now.

A. Union.

The Court: UAW-CIO.

Mr. Hamborsky: Yes.

The Court: That is what he said.

Mr. Hamborsky: Yes.

The Court: Because sometimes he says "unit" and not "union", and I don't know exactly what he means.

A. And it helps them, you know, to become members of [fol. 47] the union. Helps, you know, the union fellow workers in their struggle for better wages and better living. That is what was the purpose of the Greek Workers Educational League.

By Mr. Hamborsky:

Q. Was there a Greek Fraction of the Communist Party working within the Greek Workers Educational League?

A. The Greek Fraction got nothing to do with the Greek Educational League.

The Court: Pursue the question if you want to. He hasn't answered the question. But if you are satisfied, I am.

Mr. Hamborsky: I am not satisfied.

The Court: What is that?

Mr. Hamborsky: I am not satisfied.

The Court: All right. You may pursue it. Ask him again, and listen to the question.

Mr. Hamborsky: Read the question back to the witness.

(Last question read by the Reporter.)

A. There was members of the Greek Fraction into this Greek Educational League, yes.

By Mr. Hamborsky:

Q. Who were the officers of the—

The Court: (Interposing) Why don't you—you haven't got an answer, yet, to your question.

Mr. Hamborsky: Well——

[fol. 48] The Court: (Interposing) The court is not going to watch these things. I can't act as attorney for the Government in these matters.

Mr. Hamborsky: Well, he said——

The Court: (Interposing) Unless you don't want it. Maybe you don't want it. But he hasn't answered your question, yet. He said—you asked him a question. If the question is worth asking and you are entitled to an answer, get it.

Mr. Hamborsky: Read the question back.

(Previous question re-read by the Reporter.)

The Court: And his answer.

(Last answer read by the Reporter.)

The Court: Members. Individual members. Now, get the answer to your question. It may become important.

By Mr. Hamborsky:

Q. Would you answer the question?

A. I think I did.

Q. Isn't it true, Mr. Polites, that the Greek Fraction, as a fraction—not individual members, but the whole Greek Fraction, was part of this Greek Educational Workers League?

A. No.

Q. Greek Workers Educational League?

A. I said "No".

Q. The answer is "No". Now, who were the officers of the Greek Workers Educational League?

[fol. 49] A: I don't remember the names.

Q. Well, I will ask you point blank, weren't all the officers in that League members of the Communist Party?

A. No, sir.

Q. Was the top officer, the President, a member of the Communist Party?

A. I don't remember.

Q. Were you ever President of that group?

A. Not that period.

The Court: Would you read the answer?

(Last answer read by the Reporter.)

By Mr. Hamborsky:

Q. Not that period. What period were you a member—or were you an officer?

The Court: Which group are you talking about? I don't know.

Mr. Goodman: I am wondering, are you referring to the period prior to his naturalization, counsel?

Mr. Hamborsky: He took it out of the period. I have been questioning about his political—or his Communist activities from 1931 to 1938.

Mr. Goodman: Well, I think you are entitled to question him up to 1941. It may be between 1938 and 1941. But your question doesn't reveal whether it is the period prior to 1941.

The Court: I don't know which group he is talking about [fol. 50] now, whether it is the so-called fraction or the Educational League.

Mr. Hamborsky: Okay.

The Court. All right. Go ahead.

By Mr. Hamborsky:

Q. All right. Were you ever the president of the Greek Fraction of the Communist Party?

A. No.

The Court: Or the head officer?

By Mr. Hamborsky:

Q. Or the head officer, whether you call it the general secretary or director.

Mr. Goodman: Of the Greek Fraction?

By Mr. Hamborsky:

Q. Of the Greek Fraction of the Communist Party?

A. Yes, on a short period, yes.

Q. When was that?

A. 1934, I think it was, or 1935.

The Court: 1944?

A. 1934.

Mr. Goodman: 1934 to 1935.

By Mr. Hamborsky:

Q. 1934 or 1935 you were the top officer of the Greek Fraction in the Communist Party; is that correct?

A. I was officer, one of the officers.

Q. I just asked you if you were the top officer, and your answer was "Yes".

[fol. 51] A. What do you mean? Explain to me what is top and what is——

The Court: (Interposing) Well, I don't——

Q. (By Mr. Hamborsky, interposing) What is the office you held? What was the name? What did they call you? What office?

A. Secretary.

Q. Secretary. It wasn't Financial Secretary?

A. No.

Q. Was it General Secretary? It was General Secretary, wasn't it?

A. What do you mean General Secretary? I was Secretary. We don't have an extra name "General".

Q. It was the top office in the Greek Fraction, wasn't it?

A. Still I can't understand you. What do you mean, "top officer"?

Q. All right. Now, during the time you were a member of the Communist Party, what were your activities in regards to the Party? Let's take right from 1931? What were your activities when you were a member of the unit?

A. I don't remember.

Q. You don't remember. Did you ever pass out leaflets?

A. Yes.

Q. Were these leaflets printed, published and circulated by the Communist Party?

A. At that time, in 1931, was about the unemployment, leaflets that have been distributed from the Unemployment Council, so I distributed that leaflet.

[fol. 52] Q. I want an answer to this question, Mr. Polites.

A. What period you say? 1931?

The Court: Read the question again, so that he understands it. And, Mr. Polites, answer the question he asks you.

(Previous question read by the Reporter.)

A. Yes, I distribute the literature.

By Mr. Hamborsky:

Q. I want an answer to the question, Mr. Polites.

The Court: Just a minute, please. He qualified it. Answer the question. Read the question again. Now, listen to it.

(Portion of previous question read by the Reporter as follows:

"Q. Were these leaflets printed——")

The Court: (Interposing) "Printed".

(Portion of previous question read by the Reporter as follows:

"Q—published——")

The Court: (Interposing) "Published".

(Portion of previous question read by the Reporter as follows:

"Q—and circulated——")

The Court: (Interposing) "And circulated".

(Balance of previous question read by the Reporter as [fol. 53] follows:

"Q—by the Communist Party?")

A. I don't remember what kind of leaflets was, but I distribute leaflets all kinds.

Mr. Hamborsky: I would like an answer to the question.

The Court: Well, if he says he doesn't remember, that is an answer, but there are other ways of pursuing it.

By Mr. Hamborsky:

Q. Where did you obtain the leaflets that you distributed?

A. Obtain? What do you mean?

Q. Where did you get them to distribute? Did you print them yourself?

A. I get them from the Unemployment Council at that time.

Q. The what?

A. Unemployment Council. We had Unemployment Council when we was all unemployed. I get from the Grand Circus Park many times, and I get them from the trade unions about the trade unions, and that kind of leaflets I would distribute.

Q. What trade unions? What is a trade union? What—

A. (Interposing) Like Auto Workers unions, unions, A. F. of L.

Q. And then let me ask you this question: Did you ever distribute leaflets that were printed and given to you by the Communist Party?

[fol. 54] A. I don't remember.

Q. These leaflets that you did distribute, where did you pick them up?

A. I told you.

Q. Where?

A. At these unions, the Unemployment Council, Grand Circus Park.

Q. Weren't they distributed to you at Communist Party closed meetings?

A. What?

Q. Weren't they distributed to you at the Communist Party closed meetings?

A. I don't remember.

Q. Have you ever been at the Communist Party headquarters here in Detroit?

Mr. Goodman: Are you referring now to the period prior to the naturalization, before 1941?

Mr. Hamborsky: From 1931 through 1941?

A. I don't remember.

The Court: Did you make an objection, Mr. Goodman?

Mr. Goodman: No. I asked or inquired as to the period.

The Court: All right.

By Mr. Hamborsky:

Q. Where is—where was the Communist Party headquarters during that period?

[fol. 55] A. I don't remember.

Q. Where was Ferry Hall during that period?

The Court: Who?

Mr. Hamborsky: Ferry Hall.

A. On Ferry Street.

By Mr. Hamborsky:

Q. Did you ever go to Ferry Hall during that period of time?

A. Once in a great while.

Q. Once in a great while. You attended closed meetings of the Communist Party?

A. No. They had a restaurant there. I go there and eat.

Q. Did you ever work in 1933 and 1934?

A. I don't remember.

Q. You don't remember whether you worked or not?

A. Not that time.

Q. In 1933 to 1934?

A. No.

Q. Do you know anything about a Food Workers—what is the name of it—Food Workers' Union?

A. Yes.

Q. Were you the organizer of that union?

A. Explain to me what you mean "organizer"?

Q. Did you get the people together to form the union?

A. I was on the committee.

The Court: He wasn't what?

[fol. 56] A. In the committee.

By Mr. Hamborsky:

Q. You were on the committee?

A. On the committee.

Q. Who appointed that committee?

A. Elected by the workers.

Q. Wasn't that committee appointed by the Communist Party?

A. No, sir.

Q. Wasn't that committee the Greek Fraction—

A. (Interposing) No, sir.

Q. (Continuing)—of the Communist Party?

A. No, sir.

The Court: He said he was elected by it and—

Mr. Hamborsky: (Interposing) He said he was elected by the—

The Court: (Interposing) Elected by whom?

Mr. Hamborsky: By the workers.

The Court: No, no.

By Mr. Hamborsky:

Q. What was your—

The Court: (Interposing) How could they be elected to organize themselves by the people who—that is a physical impossibility. He said he was elected as a member of the committee to organize the people. That is what he said.

Isn't that right, witness?

A. That is right.

The Court: By whom? Elected by whom?

[fol. 57] By Mr. Hamborsky:

Q. Elected by whom?

A. By the committee. And we have members, you know, in the Food Workers Union. The Food Workers Union, they had meeting, you know, and they elected a committee. They elected a committee.

Q. But before the union was organized, when you were elected to this committee to organize it—

A. (Interposing) At the time, I was—

Q. (Continuing)—who elected you to that committee?

A. At the time I went there, already, the union was organized.

The Court: I think he says, Mr. Hamborsky—and if I misunderstand it I want to be corrected—that by the time he got there—

Mr. Hamborsky: (Interposing) There was a union.

The Court: (Continuing)—and was elected on this committee, they were already formed. Now, I think the question that the court would like to have answered, and

probably you would, too, is whether he had any part at all in interesting these—what do you call them? Food workers?

Mr. Hamborsky: Yes.

The Court: (Continuing)—in forming a union or a committee.

Mr. Goodman: Well, may I interpose an objection here, [fol. 58] that it is immaterial whether he had anything to do with that particular project. I don't think it is prejudicial to the defendant, but it seems to me—

The Court: (Interposing) I don't know what it is, yet.

Mr. Goodman: (Continuing)—it is going far afield.

The Court: It may be.

Mr. Hamborsky: Well—

The Court: (Interposing). It may be. For all I know, they conducted a baseball team, so far. But they have got to take these things in stages. And I would like to know. He said he was elected. Well, sometimes it is like you make a motion at a convention and the first thing you know you are chairman of the committee. He might have—that might be the result of his activities. I don't know. Let's find out about that.

By Mr. Hamborsky:

Q. In respect to the organization of this *unit*, what did you do?

Mr. Goodman: Referring to the unit or the union?

The Court: What did you do?

Mr. Hamborsky: Union.

By Mr. Hamborsky:

A. Union?

[fol. 59] Q. What did you do with respect to organizing it? You said you were on the organizing committee?

Mr. Goodman: May I inquire whether he said "unit" or "union"?

The Court: "Union" here.

Mr. Hamborsky: Union.

The Court: Union?

Mr. Hamborsky: Union.

Mr. Goodman: I thought you said "unit".

The Court: All right.

A. We called the workers to meetings and explained to them the importance to become members of the union.

The Court: Who did?

A. The committee.

The Court: Who explained to them?

A. One of the committee.

The Court: Oh, I see. All right.

By Mr. Hamborsky:

Q. Wasn't the one of the committee you, Mr. Polites?

A. Once in a while, yes.

Q. The first time?

A. Wasn't the first time because already the union was organized.

The Court: Well, I still think that the question is "Did you have anything to do with interesting them in calling this [fol. 60] first meeting?" If you don't want it, all right. But the court can certainly see that that would be the logical way of approaching it, because he says that by the time he got on the committee there was a union.

By Mr. Hamborsky:

Did you do anything to interest the organizing of the union?

A. Interest in what?

Q. To organize?

A. To organize them in the union, yes.

Q. Did you get any instructions from the Communist Party?

A. No.

Q. Did you get any of your instructions from the Greek Fraction of the Communist Party?

A. No.

Q. Did you ever receive any instructions from the Communist Party?

A. No.

Q. Were the officers of this union members of the Communist Party?

A. No. Was the union members.

Q. None of the officers were members of the Communist Party in this union?

A. I don't remember.

Anyway, who—did you agree when you met one Tuesday night, "We will meet again next Tuesday." Is that the way you did it? That is the unit. You are talking about the unit, now.

A. No; he is talking about the Fraction now.

The Court: No. I am talking about the unit, now. Just because you may be able to mix him up, you aren't going to mix me up. We are talking about the unit.

A. Yes.

The Court: The unit. Now, you forget the Fraction. You said you met every Tuesday night, with the unit. The unit.

A. Yes.

The Court: Who suggested the next time when the meetings were to be held? Now, don't say "Fraction". I will stick to you until I get it, now.

A. The members decide.

The Court: What is that?

A. From one meeting to another.

The Court: Well, one meeting you decided to meet the next Tuesday?

A. Yes.

The Court: That is what he says. Now, you can go on with the fraction, if you want to.

[fol. 77] By Mr. Hamborsky:

Q. In these unit meetings—we will stay down at the unit meetings—did you discuss Communist literature?

A. On a unit meeting?

Q. Yes?

A. Yes.

Q. Did you discuss campaigns for the Daily Worker?

A. Yes.

Q. Did you discuss the Scotsboror boys?

A. Yes.

Q. Did you discuss Tom Mooney?

A. Yes.

Q. Did you make a report of those meetings to someone in the Communist Party, of your unit meetings? Did you report what had happened, what you did there, to someone up—someone, in the section or district level?

A. But I was no officer of the unit.

The Court: He didn't ask you that.

A. No.

By Mr. Hamborsky:

Q. As an officer of the Greek Fraction, now, did you discuss these same things in your Fractional meetings that I have asked you about in the unit meeting?

A. What same things?

Q. Did you discuss Tom Mooney?

A. Yes.

[fol. 78] Q. The Scotsboro boys?

A. Yes.

Q. Daily Worker campaigns?

A. Yes.

Q. And the distribution of Communist literature?

A. Yes, sir.

Q. And did you make a report as an officer in the Greek Fraction to someone higher up in the Communist Party?

A. Yes.

Q. Who?

A. That time, I was giving—sent report to New York.

Q. To New York. Who did you get your orders from at that time?

A. From National office of Greek Fraction in New York.

Q. Of the Communist Party?

A. Of the Communist Party.

Q. Of the United States of America?

A. Yes, sir.

The Court: I think we will take a recess. You know what I would like to have you do; if you can, is draw on the board the pyramiding of responsibility here. Now, it appears that the smallest unit is the unit itself, with six or seven members. That is right, isn't it?

A. Yes.

The Court: Above that is either the fraction or the district. I don't know which, and I would like to know, [fol. 79] because—

Mr. Hamborsky: (Interposing) Well, your Honor—

The Court: (Interposing) You see, as I have seen these cases time and time again, one word, when you are talking about "unit," yes. When you talk about fractions, either fractions or units, you can argue a week on it.

Mr. Hamborsky: Well, we have expert testimony of that, your Honor, and it is because we called the defendant first, and because of the——

The Court: (Interposing) I take it for granted you are going to prove that.

Mr. Hamborsky: (Continuing)—because of the fact that the defendant has opened the door, that we——

The Court: (Interposing) Don't forget this: You know about this. I don't.

Mr. Hamborsky: Yes.

The Court: I have got to get it. And when you come to a place and you take an entirely different tack you leave me right in the middle of the river, you know—and I can't swim very well.

Mr. Hamborsky: Well——

The Court: (Interposing) All right. Take a little recess.

(Whereupon a short recess was held.)

[fol. 80] By Mr. Hamborsky:

Q. Now, Mr. Polites, I believe that when we left off, you mentioned the fact as Secretary of this Greek Fraction, you reported your activities to New York?

A. Yes, sir.

Q. Who did you make your report to?

A. To the Greek Fraction of New York.

Q. And that was the Greek Fraction of the Communist Party of the United States?

A. Yes, sir.

Q. Who was the man that you made the contact with, to report to?

A. Well, I sent it, you know, in that name Greek Fraction, you know, of——

Q. (Interposing) Did you receive instructions on the conduct of your Greek Fraction from this same group in New York?

A. Well I happen to serve only short period, and, of course, I was a member of the Bureau, whatever you call it, Fraction, but I was not Secretary. I only make one report I remember.

Q. All right. You mentioned you were a member of the Bureau.

A. That is of the Fraction, whatever you call it.

Q. What is the Bureau?

A. It is fraction, the committee of the fraction.

Q. And how many were in a Bureau?

A. About three.

[fol. 81] The Court: Did he say that a committee from the—a committee from the fraction is called a Bureau?

Mr. Hamborsky: Yes.

The Court: All right.

By Mr. Hamborsky:

Q. And is the right name of that the "Polit-Buro"?

A. What?

Q. Politburo?

A. I don't understand you. What you mean?

Q. Isn't the name of these three men—don't they control the Greek Fraction?

A. Yes.

Q. And isn't that called the Politburo?

A. No. We call it just Bureau.

Q. Just Bureau?

A. Yes.

Q. Do you know how they spelled it?

A. I am very poor on that.

The Court: What is that?

A. I am very poor on spelling.

The Court: I know. But you might know this one. If you saw it written once in a while, you might know it.

By Mr. Hamborsky:

Q. It is spelled "B-u-r-o" isn't it?

[fol. 82] A. I am sorry.

Q. Isn't it spelled B-u-r-o?

A. I don't know.

Q. You don't know. Now, I am going to ask you if during 1935 were you the Agitprop Director of the Greek unit?

The Court: What do you call that?

Mr. Hamborsky: Agitprop.

The Court: P-r-o—

Mr. Hamborsky:—p.

The Court: "prop"?

Mr. Goodman: Your Honor please, I would like to interject an objection at this point. I have been considering [fol. 61] doing it for some time. But I think I ought to at this point.

As I understand it, the Government has to prove or try to prove that this man had knowledge of the objectives of the Communist Party, which they claim constituted overthrow of the government by force and violence. Now, it seems to me that it is not relevant to the issue in this case to find out whether one of the objectives of the Communist Party, or him, as a member of the Communist Party, was to organize the food workers into a union or what the union did.

The Court: I don't know at the time, and I don't know yet what the union—whether this was a different kind of a union than the ordinary union that men form and have a right to form.

Mr. Goodman: Well, the —

The Court: (Interposing) I will sustain the objection to any further questions unless they are going to show something in connection with the union and the Communist Party. The mere fact that members of the Communist Party were in the union—

Mr. Hamborsky: (Interposing) Well—

The Court: (Interposing), That isn't—we aren't engaged here in driving Communists out of unions.

Mr. Hamborsky: Well, it is—

[fol. 62] The Court: (Interposing) That isn't the purpose of these proceedings.

Mr. Hamborsky: Let me—

The Court: (Interposing) These hearings.

Mr. Hamborsky: Let me say this: That we will show by competent evidence just what Mr. Goodman said we wouldn't show.

The Court: All right. That is a statement made to the court.

Mr. Hamborsky: We also will—we also are laying the foundation for possible impeachment and perjury in cross-examining this witness, too.

Mr. Goodman: I object to that statement.

The Court: That doesn't mean you have *carte blanche* to walk over any place.

Mr. Hamborsky: I appreciate that. But these questions I am directing now—

The Court: (Interposing) All right.

Mr. Hamborsky: The Government knows—

The Court: (Interposing) Go ahead. On that promise, you may proceed.

Mr. Goodman: As I understand counsel says he is going to introduce proof to show that this union is an organization which advocated overthrow of the government by force and violence?

[fol. 63] Mr. Hamborsky: No, I did not say that.

The Court: He doesn't have to go by this alone. It can be a link in the chain. You can pursue it for the time being. But I may entertain a motion later on.

By Mr. Hamborsky:

Q. When this union was organized, did you ever make a report back to anyone in regards to its organization?

A. To the members.

Q. To the members of what?

A. Of the union.

Q. Did you ever make a report back to any branch of the Communist Party?

A. No, sir.

Q. Do you know the names of some of the officers of this Food Workers—or Food Workers' Union when you helped organize it?

A. If I see the people, maybe, but I don't remember names.

Q. You don't remember any of their names?

A. No, sir.

Q. Now, after this Food Workers' Union was organized, did you obtain work through the Food Workers' Union?

A. I don't remember.

Q. All right. Now, do you know what a section meeting of the Communist Party is?

A. Yes.

[fol. 64] Q. You stated before that it was a meeting of several units?

A. Yes.

Q. Do you know what a District meeting of the Communist Party is?

A. District?

Q. Do you know what a District meeting is?

A. Yes, it is a District.

Q. All right. Now, what is a District meeting?

A. Explain so I can—

The Court: (Interposing) What is that?

By Mr. Hamborsky:

Q. What is a District meeting?

Mr. Hamborsky: He said he knew what it was. I just want him to say what it is.

A. Make it plain so I can understand you better. I can't understand what you mean, District meeting.

By Mr. Hamborsky:

Q. Mr. Polites, you just said you knew what a District meeting was.

Mr. Goodman: I beg to differ. He said he knew what a District was, I think.

The Court: No. The question was "Do you know what a District meeting is"?

A. No. District.

The Court: He said "Yes." Now, if he wants to change it, let's find out. Do you know what a District meeting of the Communist Party would be?

[fol. 65] A. I don't understand what the definition of District meeting. I know District is District.

The Court: Well, I suppose a District meeting would be a meeting of those within the District. Now, let's see if we can get it in that way. I don't know.

By Mr. Hamborsky:

Q. Well, were you ever an officer of the District?

A. No, sir.

Q. Were you ever a Sectional or Section officer of the Communist Party?

A. No, sir.

Q. What did you do the time that you were a member of the Communist Party? What were your duties and what did you do? You can start in 1931.

A. I can't explain.

Q. Mr. Polites, you were a member for seven years. You attended meetings, at least once a month. That was your testimony. Now, what did you do while you were a member of the Communist Party, for those seven years?

A. Well, we tried in 1931 to organize the workers.

Q. Nineteen when?

A. 1931. When they throw them out in the streets, you know, we try, you know, when the rest of the workers, you know, all kind of arrangements to be, you know—to help them, you know, to take them to welfare station because [fol. 66] they was kind of ashamed and shy, education—educate them to have the right, you know, to live and to become good workers, you know, and this kind of sort of activities I had.

The Court: I didn't hear that last part.

(Last portion of answer read by the Reporter.)

By Mr. Hamborsky:

Q. While you were a member of the Communist Party in 1931, I want to know what you did during that year?

A. That I done?

The Court: That is what he just got through saying.

Mr. Hamborsky: I gave him the whole seven year period on the first question.

The Court: I see.

Mr. Hamborsky: Now I am breaking it down, if that is the kind of answer I am going to get.

A. At that time, you know, I was unemployed. Grand Circus Park, you know, was educational center, you know, of the city. We was going there, you know, we talk, you know, our problems, and we talk why we are hungry, and try, you know, to find means and ways to organize ourselves, you know, and to get something to eat. At that time I had my baby and my wife, just got married, and I had no even milk at the house, and I was down there, you know, Grand Circus Park with the rest of the fellows to try, you know, [fol. 67] to find means and ways to eat, to exist.

By Mr. Hamborsky:

Q. Well, is this all you did when you were a member of the Communist Party during 1931?

Yes.

Q. During 1933 and 1934 you testified that you were the Secretary of a unit.

The Court: Well, wait a minute, please. Has he been on trial before, in 1933 and 1934?

Mr. Hamborsky: No.

The Court: He gave some testimony in 1933, 1933 and 1934?

A. No.

The Court: Read the question and see if that isn't what he said. Read the question.

Mr. Hamborsky: I said "You testified before, earlier today".

The Court: What is his question?

(Last question read by the Reporter.)

The Court: He didn't testify. You mean "You have testified today that during—"

Mr. Hamborsky: (Interposing) Yes.

The Court: All right. Let's get that straight, gentlemen. These things hinge, sometimes, on one word. I know. I have had too many of these cases. I know how one side or the other can make a lot out of one word [fol. 68] want to know.

By Mr. Hamborsky:

Q. You testified earlier today—I believe it was 1934 and 1935—that you were the Secretary of a unit of the Communist Party here in Detroit. Is that correct?

The Court: Just a minute, please.

A. No.

Mr. Goodman: I think he testified he was Secretary of a fraction, Greek Fraction.

The Court: Fraction. He said "fraction".

Mr. Hamborsky: The Greek Fraction.

Mr. Goodman: That is what he said.

The Court: Of the Communist Party.

By Mr. Hamborsky:

Q. Now, what were your duties—

The Court: (Interposing) May I also, before you get into that—what did he answer to that? What was his answer?

Mr. Hamborsky: He said "No" to unit. I believe he said "Yes" to fraction.

The Court: Yes. Is that right?

A. Yes.

The Court: Didn't he also testify at one time today he never was an officer of any kind in the Communist Party?

Mr. Hamborsky: That was—

[fol. 69] The Court: (Interposing) Let's find out. Didn't he?

Mr. Hamborsky: That was earlier.

The Court: I don't care, early or late, it comes to the same thing, doesn't it?

You also testified you were never a member of any part of the Communist Party, didn't you?

Mr. Goodman: Never—

Mr. Hamborsky: (Interposing) Officer.

The Court: Any officer.

A. No, sir.

The Court: Yes. Officer in the Communist Party. Didn't you?

A. When unit and sections they mentioned, units and sections.

The Court: You said any kind of officer. Any kind.

A. And the—

The Court: (Interposing) I was particularly careful to see that the question was "any kind of an officer" of the Communist Party, and you said "No". Didn't you say that?

A. I said of the units and sections.

The Court: All right. All right. Now you want—if you did say that, you want to have it corrected?

A. Yes.

[fol. 70] The Court: So that you admit that you were an officer of a fraction of the Communist Party; is that right?

A. Yes.

Mr. Hamborsky: Yes.

The Court: All right. Now, proceed.

By Mr. Hamborsky:

Q. Now, the Greek Fraction was closed, was it, and only Communist members could attend meetings; is that correct?

A. Yes, sir.

Q. What were your duties as Secretary during those years that you were an officer in that fraction?

A. Was a short period I have been a Secretary at that time and I think we had only one meeting. We called one meeting of it and what we discussed I don't remember.

Q. Did you, during that time, go to Communist Party headquarters?

A. I don't remember.

Q. You were a Communist for seven years and you don't remember whether or not you went to Communist Party headquarters? Is that your answer?

The Court: During that whole time?

Mr. Hamborsky: During that whole time.

The Court: Do you remember that?

A. Your Honor, I don't remember.

The Court: All right. I don't even know if they had one or where it was. Find out. Ask him if he knows where [fol. 71] it was. Did you know where the Communist headquarters were?

A. At that time, I don't remember.

By Mr. Hamborsky:

Q. During the whole seven years?

The Court: During any of that time—during any of the seven years, didn't you know where the Communist headquarters were in Detroit? In Detroit here, you mean?

Mr. Hamborsky: Yes.

A. I don't remember.

The Court: All right. You don't remember.

By Mr. Hamborsky:

Q. All right. Let's get back to the unit meetings. Where were the unit meetings?

A. I don't remember.

Q. You don't remember where the unit meetings of the Communist Party were held?

A. I don't remember.

Q. Do you remember when they were held?

A. I think it was Tuesday.

Q. Tuesdays? Every Tuesday? Once a week, wasn't it, Mr. Polites?

A. I don't remember, sir.

The Court: You have to talk up. I have to strain myself to hear everything you say.

Mr. Hamborsky: His answers for the last three or four questions are "I don't remember".

[fol. 72] The Court: All of them?

Mr. Goodman: No; that is incorrect.

Mr. Hamborsky: The last one was.

The Court: Yes. He said "Tuesday". I remember his saying that. All right.

Mr. Hamborsky: I forgot "Tuesday" in there.

The Court: All right.

By Mr. Hamborsky:

Q. Well, when you were a member of the unit, what were your duties?

A. I don't remember, sir.

Q. When you were an officer in the Greek Fraction, what were your duties?

A. My duties was to call the members together once in a while.

Q. And what would you do when they got together?

A. Discussed the problems.

The Court: What did he say?

(Last answer read by the Reporter.)

By Mr. Hamborsky:

Q. What problems would you discuss?

A. The conditions, the workers always have problems, you know, if they are unemployed.

The Court: Give me that again. I don't quite get that.

A. When the workers was unemployed, they got prob-

lems, and we discussed how we would be—how to help ourselves.

The Court: Remember, you are talking about the unit; [fol. 73] not the union. Is that right?

Mr. Hamborsky: No, I am talking about the Greek Fraction right now.

The Court: Well, the fraction.

Mr. Hamborsky: Of which he was an officer.

The Court: We are talking about—he is asking you about what you were doing not as a union man, but what you were doing as a Communist. That is, what problems you discussed. That is right, is it not, Mr. Hamborsky?

Mr. Hamborsky: That is right.

The Court: All right. Now, remember that you are talking about the Communist Party, and you met once a week, and you discussed your problems, and he wants to know what your problems were.

A. Well—

By Mr. Hamborsky, interposing:

Q. Where did you get—pardon me a minute. Where did you get—who gave you the problems to discuss? Who told you to call these meetings together?

A. Nobody.

Q. Nobody. Didn't a member of the District tell you to hold these meetings?

A. No, sir.

Q. Did a member of the section of the Communist Party tell you to hold these meetings?

A. No, sir.

[fol. 74]. Q. You just decided yourself; is that it?

A. The committee.

Q. The committee?

A. Committee.

The Court: Well, let's see. He may have—one week. you didn't decided, let's say; on Monday, let's have a meeting tomorrow night. You didn't do that. You had already gone on record, had you not, to have a meeting every Tuesday night? That is, when the group got there somebody said—somebody made a resolution to meet every Tuesday night?

A. No, your Honor. That was the unit. Talking now about Fraction.

The Court: Oh.

A. Fractions.

The Court: Fractions and units. You know; you have got to be very careful, because these answers, a lot of them, hinge on one word. Now, you have got to be careful about "units" and "fractions". Which is the larger of the two, a unit or a fraction? A fraction is, isn't it?

A. Fraction.

The Court: All right. Which one was it that met on Tuesday night?

A. The unit.

The Court: Unit?

[fol. 75] A. Yes.

The Court: All right. Now, he wants to know how you picked the Tuesday night. Who did it; where you did it. This is for the unit. The unit met on Tuesday night. That is the group of five or six. Every Tuesday night the unit would meet. Don't you remember where you met?

A. No.

The Court: You don't remember where you met. Well, you didn't meet in the Chamber of Commerce over here, did you?

A. No.

The Court: You didn't meet at the Masonic Temple or the Olympia, did you? Can't you remember where you met? Now, this is a big city, but you ought to be able to pick out one place, couldn't you?

A. Well, I remember a little place over here they called it, was a coffee house, and on top of that was a small place. They knocked it down.

The Court: What is that?

A. The building had been down now.

The Court: Anyway, you met—is the unit what we sometimes hear of as the cell, the Communist cell? You have heard that expression, haven't you?

A. Yes. I have heard, but I don't know exactly what it means.

[fol. 76] The Court: You don't know if that is the same as a cell? Of course, you don't know that. All right.

By Mr. Hamborsky:

Q. Let me ask you this. Do you know what "agitprop" means, Mr. Polites?

A. Not exactly, no. You make it a little——

Q. (Interposing) Do you know what it means?

A. Well, explain it to me.

Q. I am asking you if you know what it means.

The Court: He is asking you. Don't you ask him.

By Mr. Hamborsky:

Q. Do you know what it means?

A. No.

Q. Do you know what "Agitation Propaganda Director" means?

A. No, I don't know what that means.

Q. You don't know what that means. During 1935, isn't it true that you were the Director of the Greek unit for Agitation and Propaganda?

[fol. 83] A. No.

Q. Now, while you were the Secretary of the Greek Fraction, you stated before, today, that you discussed Communist literature?

A. Yes.

Q. What were some of the books, pamphlets and other matters that you discussed at that time?

A. I don't remember, sir.

The Court: Now, please. Please talk up a little louder, will you?

A. I don't remember.

The Court: Well, all right. I have to look at you and strain myself to hear what you have got to say. And I am sure if these gentlemen down below weren't looking right at you they wouldn't know what you were saying.

By Mr. Hamborsky:

Q. Well, when you stated that you did discuss this Communist literature in these meetings, what kind of literature was it?

A. It was Communist literature, but I don't remember what kind.

Q. You stated before that you were a member of this three-man Bureau, is that correct?

A. Yes, sir.

Q. And that was of the Greek Fraction?

A. Yes.

Q. Did you hold any other Bureau positions in the Communist Party during your entire membership?

The Court: Now, there is one of those places where words are very particular. I think I know what you mean. But you might as well get it, because I am going to get it anyway. "A member of the Communist Party, or any fraction, or part or parcel thereof." Now, let's get it down here so that you have got it, because he can answer that and not tell you a thing, if he was inclined that way. Not that he is, but if he was so inclined, he could answer that question.

Mr. Hamborsky: Well, you mentioned——

The Court: (Interposing) All right.

Mr. Hamborsky: (Continuing)—at the time we recessed——

The Court: (Interposing) Your question, now. Your own question. Never mind the others.

Mr. Hamborsky: Oh, no. This is what I had in mind. Judge: You mentioned the fact about outlining this structure on the board before we recessed. Now, we have a mimeographed section, and I can state off the record what it is, or hand it to you.

The Court: That isn't necessary. Let's get that on. Probably he would put it on, for all I know, or probably you and Mr. Goodman can. I assume Mr. Goodman knows about it. I don't know.

[fol. 85] But let's ask the witness. I tell you, gentlemen, now, that in these kinds of proceedings the rule is that the Government must prove its case by clear and unequivocal, convincing testimony. That is true, is it not?

Mr. Hamborsky: That is true, your Honor.

The Court: That is true. Now, where there is a question asked that a person can answer and yet convey an entirely different meaning from the intention of the question, you lose your clear, unequivocal, convincing testimony. I am

just trying to get the truth in this case. If you will state your question, let him answer it.

Mr. Hamborsky: Would you re-read the last question?

(Last question read by the Reporter.)

The Court: Any Bureau positions. Answer that question.

A. No.

By Mr. Hamborsky:

Q. Now, as an officer in the Greek Fraction of the Communist Party, you stated earlier that you discussed the Daily Worker campaigns.

A. Yes.

Q. What did you do as a result of those discussions?

A. I don't remember the decisions we take. I don't remember the decisions we take at that time.

[fol. 86] Q. Did you try to increase the sales of the Daily Worker?

A. Yes; that is all the time.

The Court: Did he say "That is all"?

Mr. Goodman: "That is all the time", I think.

The Court: "All the time"?

Mr. Goodman: Yes.

By Mr. Hamborsky:

Q. What—pardon me. Strike that. After these Greek Fractional meetings, did you make your report to anyone other than New York?

A. I don't remember, sir.

Q. Now, what was the Daily Worker during the time you were a member of the Communist Party?

A. Paper.

Q. A newspaper?

A. Newspaper.

Q. Who printed and published it?

A. Communist Party.

Q. Of the United States?

A. Of the United States.

Q. And it was the official paper of the Communist Party of the United States; is that true?

A. I don't remember now.

Q. Your answer is that you don't remember now? As an officer in the Greek Fraction was it your responsibility to see who received the stamps on payment of dues?

[fol. 87] A. No, sir.

Q. Was it your responsibility to take the payment of the dues and to transfer it to someone higher up in the Party?

A. No, sir.

Q. Do you know if that was done by another officer in your Fraction?

A. Not in the fraction.

Q. Did you pay dues as a member of the fraction?

A. No, sir.

Q. Now, Mr. Polites, isn't it true that every member of the fraction, the Greek Fraction, had to be a member of the Communist Party of the United States?

A. Yes, sir.

Q. And was it also true that the fraction would organize fronts that would include non-Communist members?

A. What do you mean "fronts"?

Q. Do you know what a Communist front organization is?

A. No.

Q. You don't? You never heard the word "front" before, in regards to Communist activity?

A. No, sir.

Q. Isn't it true, Mr. Polites, that the purpose of a fraction in the Communist Party was to carry out Communist Party policies within the front organization?

A. What do you say? I don't—I don't understand what [fol. 88] you mean by "front organization".

Q. Well, these organizations that were formed by a Communist Fraction, which included—was controlled by the Fraction but included non-Communist members? What were they called?

The Court: Just a minute, please.

Mr. Goodman: Well, I object to the question. I think it is quite confusing.

The Court: Well, I think that it states something that there has been no testimony on here yet. Sustain the objection. The man is here on cross-examination, but now

there is no jury here, and I can say it bears the—it looks like a trick question. I don't say that that is intended, but it has all the earmarks on a trick question.

Mr. Hamborsky: I certainly didn't intend it as a trick question.

The Court: No, I don't think you did. I am sure you didn't. But that is one reason why the court will sustain the objection. Read the question to him, and see if you don't agree with me, Mr. Hamborsky.

(Portion of last question read by the Reporter as follows:

“Q. Well, these organizations that were formed by a Communist fraction——”)

The Court: (Interposing) There is no evidence on that. [fol. 89] (Portion of last question read by the Reporter as follows:

“Q.—which included—was controlled by the fraction but included non-Communist members——”

The Court: (Interposing) No evidence on that.

(Balance of last question read by the Reporter as follows:

“Q.—what were they called?”)

The Court: Isn't that true?

Mr. Hamborsky: Yes; that is true.

The Court: All right. Then you can see that is one of those, almost, “Have you stopped beating your wife” questions. You didn't intend it.

Mr. Hamborsky: Well——

The Court: (Interposing) But let's reframe the question, if you want to.

By Mr. Hamborsky:

Q. When you were an officer in the Communist Greek Fraction, was part of your responsibility to have your fraction organize groups outside of the Party with non-Communist members attached?

A. Still is—I don't understand exactly what you mean.

Q. But you don't know what “front” is?

A. I don't know what “front” is.

Q. Well, Mr. Polites, isn't it true that the instructions of

[fol. 90] the Communist Party were that you carry out Communist Party activity in other organizations outside of the Communist Party?

A. Communist Party instructions was to educate the people in general, and help the workers to organize themselves, whatever they want to be organized, trade unions or any other organizations. They don't go in and organize no kind of organizations.

Q. What would they instruct you to do as to educating all of the people?

A. To educate them, you know, to the certain issues as they come up every day.

Q. That education amounted to the use of Communist Party literature, did it not?

The Court: I didn't get it. I missed the question.

(Last question read by the Reporter.)

A. Yes.

By Mr. Hamborsky:

Q. And who did you receive your instructions from?

A. I received the instructions from New York, because we was dealing, you know, with the Greek people. We received the instructions from New York, what certain issues was.

Q. What were those issues?

A. Well, I don't remember.

[fol. 91] Q. Well—

A. (Interposing) I don't remember exactly now what the issues were then.

Q. All right. Now, I am going to ask you, Mr. Polites, if you have been a member of the Communist Party, any branch or fraction thereof, since 1938?

Mr. Goodman: Well, just a moment. I will object to that question, unless it is limited to the period up to the granting of the naturalization.

Mr. Hamborsky: Well, I don't think it necessarily—

Mr. Goodman: (Interposing) Well, the issue is the materiality. Since then the question would be improper.

The Court: Part of that—he has gone as far as 1938. No, the question as put is all right.

Mr. Goodman: Let me get clear, your Honor, just what is meant, then. Does the counsel mean from 1938 to 1942, when the citizenship was granted? Is that the question? Or up to the present time?

Mr. Hamborsky: I mean until today.

Mr. Goodman: Well —

Mr. Hamborsky: (Interposing) He stated he left the Communist Party in 1938.

Mr. Goodman: That is right.

[fol 92] Mr. Hamborsky: I am laying the foundation here, if he so answers "Yes" or "No", and I think I have a perfect right to cross-examine.

Mr. Goodman: I have no objection to the question up to the time of granting the citizenship. My objection is to the question as —

The Court: (Interposing) Read the question over again.

Mr. Goodman: (Continuing) —to subsequent to that date.

The Court: I think the question may be improved upon in form; I don't know.

(Last question read by the Reporter.)

Mr. Goodman: The way the question was formed, it means 1938 and past the time of the naturalization. I take the position that that question is not relevant to the issue in this case unless it is limited to the period up to the granting of the citizenship.

The Court: Is there any charge here he is a—what is the charge here? The charge here is fraud on—

Mr. Hamborsky: (Interposing) Concealment.

The Court: (Continuing) —what happened up to 1941, isn't it?

Mr. Hamborsky: Yes, sir. That is the charge. [fol. 93] But when I asked him at the start of the cross-examination when he was called as a witness, he stated he was a member of the Communist Party and was a member from 1931 through 1938.

Mr. Goodman: Well, the question was limited and my inquiry—as a matter of fact, I was very careful about this—it is the period prior to the granting of the naturalization. And I, on many occasions, as your Honor will remember, wanted to know, so that there will be no mis-

understanding whether the question so related to the period prior to the naturalization. The questions were so limited.

The Court: They have been asked before and the court permitted them, but I can't remember now—

Mr. Goodman: (Interposing) But the issues in the case as framed by the complaint are that prior to the time he became a citizen he was a member of the Communist Party within the ten year period. There is no allegation as to anything subsequent to that date, and it is irrelevant to the issues in this case.

The Court: Well—

Mr. Goodman: (Interposing) I have no objection to the question as to whether he was prior to that time or not. I think he has answered it. I have no objection to his answering it again. But I do object if the question seeks to cover [fol. 94] the period subsequent to the granting of the citizenship.

Mr. Sureck: Your Honor, may I point this out: That any membership in the Communist Party after the date of naturalization would show continuity and also would show that when this man took the oath of allegiance, when he said he intended to abjure allegiance to others, he had no such intent to do so.

Mr. Goodman: That depends on whether the Communist Party advocated the overthrow of the Government or whether it was inconsistent with the oath. That is an issue on which testimony has to be taken. None has been taken yet.

The Court: Of course, we know today it does. The Supreme Court has already spoken.

Mr. Goodman: They have not. I must beg to differ.

The Court: I disagree with you on that. But whether they were in 1935 or not, I don't know, or 1938, or when ever he quit.

No; this might even go to his credibility, to some extent. I will permit the answer.

Mr. Goodman: May I state, if the court overrules my objection on the question of materiality as not being within the issues of the case—then may I advise the witness [fol. 95] that, in my opinion, he does not have to answer the question with respect to membership in the Communist Party, if any, subsequent to the year 1940, because it was

in that year that the Smith Act was passed, and any admission with respect to that year might—might tend to incriminate him under the present laws.

Therefore, I think he ought to be advised of his rights in that connection.

The Court: I think you are right.

Mr. Goodman: And he may refuse to answer the question.

The Court: I think you are right.

Mr. Hamborsky: Well, I believe that the statement that the witness has made and put on the record here indicates he has waived the right not to answer that question.

The Court: Oh, no, he hasn't. What statement has he made that waives the right not to answer the question?

Mr. Hamborsky: He stated he was a Communist from only 1931 to 1938.

The Court: He didn't say "only". I don't think he used the word "only" at any time.

Mr. Goodman: Prior to the date of the naturalization. The question was always limited to that.

[fol. 96] The Court: Yes, sir.

Mr. Goodman: I was very careful, your Honor, to make sure of that.

Mr. Sureck: Well, your Honor, whenever he opens up the question as to membership in the Communist Party, I would say he would have waived his right to—

The Court: (Interposing) You can say that, but it isn't true. At least, I don't think it is true.

You have the right, Mr. Goodman, to instruct the witness, if you so desire.

Mr. Goodman: All right, witness. I then will advise you—

The Court: (Interposing) He asked him if he ever was a member of the Communist Party, I think within a certain—you gave the date between—yes, you even gave the date, between certain date in 1931—

Mr. Goodman: (Interposing) The date.

The Court: (Continuing) —and 1941. He said "Yes". Now, does that mean you can go ahead and ask him, without his taking advantage of his constitutional rights, the rest of the time? Oh, no. You show me a case on that. I would like to see it.

Mr. Hamborsky: Well, I didn't ask him for the rest of the time.

The Court: I meant the other thing.

[fol. 97] Mr. Hamborsky: Yes.

The Court: No, sir. He has the right to be instructed by his counsel, and the court will give him that right.

Mr. Goodman: Mr. Polites—

Mr. Hamborsky: (Interposing) Well—

Mr. Goodman: (Interposing) Pardon me.

Mr. Hamborsky: I will withdraw that question, then, and ask this question first.

By Mr. Hamborsky:

Q. Were you ever a member of the Communist Party from 1938 to April 6th, 1942?

A. No.

The Court: His answer is "No".

By Mr. Hamborsky:

Q. Then I will ask you whether or not you are now or have been a member of the Communist Party from 1942, April 6th, until the present?

Mr. Goodman: I want to, in view of the ruling of the court, advise you, Mr. Polites, that, in my opinion, you have a right to refuse to answer that question if you feel that, in any way, an answer to that question might tend to incriminate you within the meaning of the Fifth Amendment. If you want to refuse to answer that question on that ground, you have the right to refuse to answer.

A. I refuse to answer that question.

The Court: Put that on the record. "I refuse to answer [fol. 98] that question." On what ground?

A. On the Fifth Amendment.

The Court: I know. The Fifth Amendment. But what do you know about the Fifth Amendment? You ought to know something about this. On what ground? Just to say "the Fifth Amendment" is very, very broad.

Mr. Goodman: Well, I am sorry I didn't explain the Fifth Amendment so that your Honor and the witness might understand the issue.

The Court: "Your Honor" understands it, and if the counsel does, that at least two-thirds of us do.

Mr. Goodman: It is part of my duty to explain it to the witness, and—

The Court: All right. But just to come out and say "I refuse to answer"—they do that in the movies, you know, on the Fifth Amendment, and let it go at that. But in the court here we have got to have some indication, you see, that he knows why he is doing it, because this man right now is refusing to answer the question and saying "If I do answer it, it may tend to incriminate me."

Now, let's see if he has got the right to under the Amendment. The Fifth Amendment, to him, may mean something entirely different.

Mr. Goodman: Let me advise you, witness, that the Fifth Amendment with respect to this point says that no person shall be required to be a witness against himself. That is it substantially. And the courts have said that what that means is that a person doesn't have to testify to any matter which might tend to incriminate him in any crime under the law. And you understand that explanation, witness?

A. Yes, sir.

The Court: What is your answer to the question.

A. I refuse to answer on that question.

The Court: On what ground?

A. On the ground it can tend to incriminate me.

The Court: That the answer may tend to incriminate you; is that right?

A. Yes.

The Court: All right. Is that right?

Mr. Goodman: I think the witness has exercised his right.

The Court: That is all right. He has exercised his right, but the court is insisting that he words be on the record.

Mr. Goodman: Well, your Honor, you know, I presume, as I do, that the witness does not have to be guilty of any crime.

The Court: Oh, no.

[fol. 100] Mr. Goodman: In order to refuse to answer.

The Court: Oh, no. But he refuses—

Mr. Goodman: (Interposing) That is all.

The Court: (Continuing) —to say whether he has been or since that date——

Mr. Goodman: Yes.

The Court: (Continuing) —because you must know, and I know you do know, that in other cases I think this court has said that by those very words "not incriminate myself", that that indicates something in connection with the Communist Party itself. You remember that.

Mr. Goodman: Yes.

The Court: That is why it was that in your presence I wanted to have no question as to what his position was.

Mr. Goodman: There is no question in my mind, your Honor.

The Court: All right.

Mr. Goodman: And I just point out the distinction between this question and the other questions which he has already answered.

The Court: We will come to that.

Mr. Goodman: Questions concerning the period prior to his naturalization.

By Mr. Hamborsky:

Q. From April 6th, 1942, until the present, have you ever [fol. 101] attended any Communist Party meetings?

Mr. Goodman: Just a moment. I will instruct the witness again—I would like to have permission of the court to do so—he has the same right with respect to this question, which, under the repeated rulings of some courts are also questions the answers to which may tend to incriminate a witness.

The Court: Just a minute, please. Give me that question. As I understand the question, the answer would not necessarily tend to incriminate him, by saying he had attended meetings. I don't know whether they are closed meetings or open meetings. I may have attended; you may have attended.

Mr. Goodman: He is talking about Communist Party meetings. That is what he is referring to.

The Court: You may have even attended those.

Mr. Goodman: But the point is that the courts have held; and I have the decisions——

The Court: (Interposing) I would like to see a case on that.

Mr. Goodman: Yes.

The Court: I have got your position.

Mr. Goodman: The courts have held the principle—the principle applying to these cases is that not only is the witness permitted to refuse to answer a certain question [fol. 102] relating to the commission of a crime, but any link in the chain which might lead to that is also protected by the Fifth Amendment.

The Court: I can see the logic of that, but I don't know of any case on it. Do you know?

Mr. Goodman: Yes. I know of a case on it, particularly the Hoffman case I refer to, that was recently decided by the United States Supreme Court, I think the last term of court.

The Court: Let's get it.

Mr. Goodman: Well, I don't have the exact citation, but it is United States versus Hoffman. That case—I can tell you the facts in that case. Hoffman was called as a witness before—

The Court: (Interposing) Well, get it, will you? You know where the Supreme Court reports are, and if it was decided within the last year—within the last year?

Mr. Goodman: I am quite sure.

The Court: It is an interesting point, but—

Mr. Goodman: (Interposing) But just to continue the point I was making, as far as the basic principle which is applied by the courts. For instance, in the Hoffman case, Hoffman was called by the Internal—by the—what is the name of the Committee last year, checking on gambling, a certain committee—

[fol. 103] Mr. Hamborsky: Kefauver.

Mr. Goodman: Kefauver Committee, I think it was. The Kefauver Committee or one of the committees was checking into gambling, and they asked Hoffman whether he knew a fellow called Weisberg, and he said "Yes". Then the question was, "Well, do you know him recently?" Or "When is the last time you saw him?"

The court held he was privileged to refuse to answer that question, even though he had answered the first question as to the fact he had known him.

In other words, you can stop at the point where it may constitute a link in the chain which may conceivably——

The Court: (Interposing) You may be right.

Mr. Goodman. (Continuing) —lead to a crime.

The Court: You may be right. I would like to see the case.

Mr. Goodman: The situation is one that he has to make the election to by-pass——

The Court: (Interposing) I asked Mr. Fordell to get it. He is busy.

Mr. Fordell: Your Honor, I was trying to find the name of that case.

Mr. Goodman: Hoffman.

[fol. 104] The Court: Hoffman. And he said it would be within the last year. And it would take less time to go and find it than it would to discuss it with counsel.

Mr. Fordell: There are a couple of other cases involving the issue of refusal, in which you will find a closer question.

The Court: All right. I am going to take your version of it, the court having been shown nothing to the contrary.

Mr. Goodman: Well, the witness will be here, and if the court rules to the contrary we can put him back on the stand.

The Court: Of course, suppose they say to him, "Do you own an automobile?" And he said, "No, I am not going to answer that on the ground it might tend to incriminate me".

Mr. Goodman: No, not unless there is something in the evidence, some facts which are adduced——

The Court: (Interposing) That might be.

Mr. Goodman: (Continuing) —which would indicate that it could be a link in the chain.

The Court: All right.

Mr. Goodman: But here obviously counsel's own statement about perjury and what not indicates that the witness could have genuine concern.

[fol. 105] The Court: I sustain your objection for the time being.

Mr. Hamborsky: I still want that answer.

Mr. Goodman: I thought the court ruled.

The Court: He doesn't have to answer on the ground it might incriminate him.

Mr. Hamborsky: That is what I want on the record.

The Court: Oh, that is all right.

Mr. Goodman: I see.

The Court: That may be on the record.

Mr. Goodman: I didn't realize that the witness hadn't refused to answer. We were discussing whether he had the right to refuse.

Witness, at the suggestion of the court, I am advising you for the same reasons I have already given you with respect to the previous question that, in my opinion, you may refuse to answer that question under the Fifth Amendment on the same ground.

A. I refuse to answer that question under the Fifth Amendment.

The Court: No. You are going to say why you refuse to answer that question. The Fifth Amendment is too broad. I don't know that you know what the Fifth Amendment is.

A. I refuse to answer that question on the ground that [fol. 106] not to incriminated. I couldn't say—

The Court: (Interposing) All right. I know what you mean.

By Mr. Hamborsky:

Q. Do you know Leo Syrakis?

A. Yes.

Q. Do you know William Nowell?

A. Yes.

Q. Do you know John Thomas Pace?

A. I hear the name and I met him couple of times. I don't know him.

Q. How did you meet Leo Syrakis?

A. I was working for him in the bake shop.

Q. Did you know that he was a member of the Communist Party?

A. Not at the time I was working for him.

Q. When were you working for him?

A. I don't remember exactly the date and time.

Q. Do you know the year?

A. Even that I don't remember.

Q. Was it the time that you were a member of the Communist Party?

A. Yes.

Q. Did you meet him—have you ever been at a Communist meeting of the Communist Party with Leo Syrakis?

A. I don't remember, sir.

Q. You don't remember ever seeing, at a closed meeting of the Communist Party, a Leo Syrakis. Is that it? That is [fol. 107] your answer?

A. Yes, sir.

Q. Isn't it true that you sponsored his membership in the Communist Party?

A. No, sir.

Q. That is not true?

A. Not true.

The Court: Oh, just a moment, please. Counsel was talking to me. You said "Is it true you sponsored Leo"—who?

Mr. Hamborsky: Leo Syrakis.

The Court: (Continuing) "—Leo Syrakis for membership in the Communist Party?"

Mr. Goodman: What was the answer to that?

A. No.

By Mr. Hamborsky:

Q. Isn't it true, Mr. Polites, that Leo Syrakis became the leader of the Greek Fraction immediately after you?

A. I don't remember.

Q. Do you remember when you were the Secretary of the Greek Fraction?

A. I was a member of one. I was Secretary of them.

Q. When you were Secretary?

A. Yes.

Q. Did Leo Syrakis—was he later Secretary?

[fol. 108] A. But I wasn't in the Fraction then, when Leo Syrakis was the Secretary. I know he was the Secretary, but I don't know when. But also I wasn't in the Fraction with when Leo Syrakis was the Secretary.

Q. You weren't in the Fraction?

A. No, sir.

Q. How many times did you attend a Communist Party closed meeting with William Nowell?

A. I don't remember if I—

Q. (Interposing) You don't remember if you ever attended one?

A. With him?

Mr. Goodman: What was the last answer?

(Answer read by the Reporter.)

Mr. Goodman: Again, I will say I am confused as to what the actual answer of the witness is, since the question interrupted the answer. It just doesn't make sense to me at the present time.

Mr. Hamborsky: All right. I will start.

By Mr. Hamborsky:

Q. Did you ever attend a closed meeting of the Communist Party with William Nowell?

A. I don't remember.

Q. Did you ever attend a District Bureau meeting of the Communist Party with William Nowell?

A. No, sir.

The Court: What did he say?

[fol. 109] A. No, sir.

By Mr. Hamborsky:

Q. Were you ever a representative of the District Bureau of the Communist Party?

A. I don't understand what you mean.

Q. Were you ever sent as a representative from your Greek Fraction to the District Bureau of the Communist Party?

A. I don't remember.

The Court: I have looked this case over and this case is against you.

Mr. Goodman: I must go to differ as to the effect of the Hoffman case. I think it supports the principle which is the only thing I pointed out to the court.

The Court: I don't see where it does.

Mr. Goodman: That a link in the chain leading to a possible incrimination of your client is protected under the Fifth Amendment.

The Court: But in this case they made him answer.

Mr. Goodman: No, I don't think they did. The Supreme Court held—that was the case involving Weisberg, wasn't it?

The Court: This is the Supreme Court, who—

Mr. Goodman: (Interposing) Is that the Supreme Court case?

The Court: This is United States versus Hoffman, de-
[fol. 110] cided in the Court of Appeals two or three years ago. Rehearing was denied and they held against you.

Mr. Goodman: Is that the Supreme Court decision?

The Court: This isn't. There isn't any—

Mr. Goodman: (Interposing) That is why. I prefer to rely upon the United States Supreme Court decision, your Honor.

The Court: He says it went up.

Mr. Goodman: Surely it did. Of course.

Mr. Fordell: Certiorari was denied in that one.

The Court: You said so. I can't find it here.

Mr. Goodman: In the United States Supreme Court decision, the Hoffman case holds, I think—

Mr. Fordell: (Interposing) Is that H-o-f-f-m-a-n or H-a-u-p-t-m-a-n?

Mr. Goodman: No.

The Court: This is against you. It even gives the court the right to determine whether it is incriminating and it also states that when he says it is incriminating he has to point out in what way it might—

Mr. Goodman: (Interposing) The Supreme Court reversed it and held quite to the contrary.

[fol. 111] The Court: All I have is what comes in here.

Mr. Goodman: I didn't bring it in to you, your Honor. I will be glad to submit that and several other cases.

The Court: They can use it, and tell the ground.—

Mr. Goodman: That is not the case that I referred to.

The Court: I will have it run down.

Mr. Goodman: A United States Supreme Court decision.

The Court: He said it went to the Supreme Court.

Mr. Fordell: If I have the spelling, it is okay. I can't find it if I don't know how it is spelled. Is it H-o-f-f or H-a-u-p-t—?

Mr. Goodman: I have H-o-f-f—

The Court: (Interposing) Now you are getting back to the Lindberg case.

Mr. Goodman: No.

Mr. Fordell: I have gone through the index and it doesn't give it.

The Court: Within the last year or so.

Mr. Goodman: I don't ask counsel to do it. I will be [fol. 112] perfectly willing to do it myself.

The Court: Well, someone will go and find it.

Mr. Hamborsky: What was the last question?

(Last question and answer read by the Reporter.)

By Mr. Hamborsky:

Q. Were you ever a member of the Communist Party District Committee?

A. No.

Q. Were you ever a member of the Section Committee of the Communist Party?

A. No.

Q. Isn't it true that you were the Director for Agitation and Propaganda of the Communist Party?

A. What do you mean?

The Court: He hasn't finished the question yet, I don't think. Have you?

Mr. Hamborsky: Isn't that a complete question?

The Court: I don't think it is a question.

By Mr. Hamborsky:

Q. Weren't you the Director——

The Court: (Interposing) It is a complete question, but if that is it, listen to it and see if that is the question you want.

(Last question read by the Reporter.)

[fol. 113] The Court: Now, you see? Do you want that question?

Mr. Hamborsky: No.

The Court: All right.

By Mr. Hamborsky:

Q. At the——

The Court: (Interposing) It isn't as complete as you thought it was.

By Mr. Hamborsky:

Q. At the Section level?

The Court: Is that what you want?

Mr. Hamborsky: Yes.

The Court: Now, I will show you that that can't be what you want. It won't be any good or any help when you get it on the record. This man admits he was a Communist.

Mr. Hamborsky: That is right.

The Court: Up to 1940, sometime. What time are you talking about? Suppose he says "Yes," and then later on you try to argue to me that he admitted being a Communist in 1945. Don't you see that?

Mr. Goodman: Well, I have assumed all the way through—I think it would be unfair of counsel if he didn't agree with me, because I raised the question, "Do these questions relate to the period prior to the naturalization?"

The Court: Well, now you see—

[fol. 114] Mr. Goodman: (Interposing) I asked that question once, and counsel agreed, and I assumed—

The Court: (Interposing) There you are. If you want to leave it, leave it, but the court isn't going to make these corrections any more, now gentlemen.

Mr. Goodman: It that—

The Court: (Interposing) I have told the Government time and time again that one word makes a difference here. Very often. I don't say it always does. But one word makes a difference, and you have got to be precise in everything you say, every one of the questions, particularly when the man admits he was a Communist up to 1938. Now—

Mr. Goodman: (Interposing) May I ask your Honor—

Mr. Hamborsky: (Interposing) Well, I—

The Court: (Interposing) I will tell you this, that when it comes to clear, convincing testimony, a bit of evidence that is susceptible to two interpretations is going to be interpreted in favor of the defendant here.

Mr. Hamborsky: I agree with you, your Honor.

Mr. Goodman: May I—

Mr. Hamborsky: And I won't disillusion you. My questions since the last time he answered—that he refused to answer on the ground it might tend to incriminate him, [fol. 115] have been—my questions since that time have been directed to the period between 1931 to 1941.

The Court: You had better so state.

Mr. Goodman: I have so assumed, and——

The Court: (Interposing) I haven't. I just assumed the opposite.

Mr. Goodman: I should have made it clear.

Mr. Hamborsky: Although some of them don't relate to any time.

The Court: There you are. Well, when you get some of them that don't relate to any time, then you are in the new group.

Mr. Hamborsky: Well, "Do you know Leo Syrakis and Bill Nowell"—they——

The Court: (Interposing) My clerk found the case we were looking for. Mr. Duffy.

Mr. Goodman: I think the Supreme Court decision would govern the case, the reversal.

The Court: You are absolutely right. So I sustain your motion on that. Your objection, rather.

Mr. Hamborsky: That is all. We have an immigration and naturalization man here from out of town.

The Court: What is that?

Mr. Hamborsky: Hammond.

The Court: What is that?

[fol. 116] Mr. Hamborsky: Hammond, Indiana.

The Court: That is just a sleeper jump from here. It isn't too far.

Mr. Hamborsky: Okay, Your witness.

The Court: All right, if—what do you want to do? Put this man on?

Mr. Hamborsky: Before the——

The Court: (Interposing) It is up to the defendant entirely.

Mr. Goodman: Well, are we going to adjourn? Then I had better——

The Court: We are going to adjourn, yes. We are going to adjourn a little after one o'clock.

Mr. Goodman: Then if I don't examine him now, I won't have a chance until the next session.

The Court: Yes.

Mr. Goodman: Well, all right. I have no objection then.

The Court: Is he a long witness?

Mr. Hamborsky: Shouldn't be.

Mr. Goodman: Mr. Polites, will you step down.

The Court: Liable to get through with him in a comparatively short time?

Mr. Fordell: Yes.

The Court: All right.

[fol. 117] Mr. Hamborsky: Well, if there is a loss of continuity, why, you go ahead and take the witness now.

Mr. Goodman: You are the one that suggested it. I am ready to go ahead, if you want him back on the stand.

The Court: (Interposing) All right. Let's get through with the Alphonse and Gaston parts.

Mr. Hamborsky: He suggested it as a matter of fact.

The Court: (Interposing) All right.

Mr. Goodman: Come on up here.

The Court: All right.

Mr. Goodman: I am perfectly willing to finish up with the defendant.

Cross-Examination.

By Mr. Goodman:

Q. How old are you, Mr. Polites?

A. Fifty-four.

Q. Married?

A. Yes.

Q. How many children?

A. Two children.

Q. Grandchildren?

A. Two children, two grandchildren.

Q. How long have you lived in this country?

A. Thirty-seven years.

[fol. 118] Q. How long have you lived in Detroit?

A. From 1925 to now.

Q. That would be about twenty-eight years?

A. Yes.

Q. You are a native of Greece?

A. Yes.

Q. Have you ever been arrested or convicted or any crime?

A. No, sir.

Q. During the period that you were a member of the Communist Party, as you have already testified, between 1931 and 1938, did you—or up to the period when you were granted your citizenship in April, 1942, did you at any time ever advocate the overthrow of the Government of the United States by force or violence?

A. No, sir.

Q. Did you ever advocate the overthrow of this form of Government at any time?

A. No, sir.

Q. Well, had you at any time—I started from 1931—had you at any time prior to 1931 advocated the overthrow of Government by force or violence?

A. No, sir.

Q. When you were a member of the Communist Party, did you, while you were such a member, ever hear any representative of the Communist Party advocate that the Government of the United States should be overthrown by force and violence?

A. No, sir.

Q. You say you read certain literature of the Communist Party or you discussed it. What, in general, was the nature of that literature you read? You were asked, I guess, for specific books, but I think you said you didn't remember. But what, in general, was the nature of the reading you did?

A. Well, mostly what I done at that time was the papers and small pamphlets.

Q. You don't remember the names of these specific pamphlets?

A. No, sir.

Q. All right. So far as you can remember, did you at any time during that period and prior to the time you became a citizen, read Communist literature which, in your own opinion, advocated the overthrow of the Government of the United States by force or violence?

A. No, sir.

Q. When you took your oath and filed these other papers

prior to your becoming a citizen, did you at that time believe that because you had been a member of the Communist Party you belonged to an organization which advocated the overthrow of the Government by force or violence?

A. Say that again?

Mr. Goodman: Would you read it, please?

[fol. 120] It is a little long.

(Question read by the Reporter.)

A. No, sir.

By Mr. Goodman:

Q. The Communist Party had been on the ballot and run candidates for public office, had it not?

A. Yes.

Mr. Hamborsky: I object to the form of the question.

Mr. Goodman: Well, what is wrong with the form of it?

Mr. Hamborsky: I object to the question in general. He doesn't know it.

Mr. Goodman: That is up to him.

The Court: Cross-examination. He may answer.

Mr. Goodman: Yes.

Mr. Hamborsky: Is this cross-examination?

The Court: Wait a minute, please. Yes, it is.

Mr. Goodman: Surely.

Mr. Hamborsky: Is this cross-examination?

Mr. Goodman: On matters based on the—

The Court: (Interposing) Just a minute, please.

Mr. Hamborsky: I understood under the Act I might call an adverse witness to question him with leading questions.

[fol. 121] The Court: That is right.

Mr. Hamborsky: And this is not cross-examination.

Mr. Goodman: I can ask him—

The Court: (Interposing) You can call him for cross-examination, and when you do that that gives the other side the right to cross-examine, and that is the peril of calling somebody for cross-examination, as I remember the rule. If I am wrong—is that the way you remember it?

Mr. Goodman: I can ask leading questions.

The Court: Yes.

Mr. Goodman: Which is the only issue involved here.

The Court: Is that the way you remember the rule on cross-examination?

Mr. Goodman: Yes. And, of course, I am taking the witness over. When he is brought on for cross-examination, I can ask him leading questions, and I am not bound by the type of question I would have had to use if I had called him.

The Court: Yes.

Mr. Goodman: Which is the only issue, as I understand it.

The Court: That is right. That is the way I understand [fol. 122] it. Is there any change in that rule?

Mr. Goodman: The question—

Mr. Hamborsky: (Interposing) The rule, as we recited it, entitles us to call him as an adverse witness and start him off on leading questions.

The Court: You may do that, and you have done it.

Mr. Hamborsky: Yes. All right. Now, as to the other rule, I am not familiar with it, but I believe counsel has the right—

The Court: (Interposing) The rule has always been that if you call him for cross-examination that the only penalty you are subject to is that it opens the door for the other side to cross-examine him. That must be the rule, gentlemen.

Mr. Hamborsky: I think that the counsel—

The Court: (Interposing) Have you got it there?

Mr. Fordell: Here it is. (Handing book to the Court.)

The Court: Okay. I think it is all right.

Mr. Goodman: The witness answered the question, didn't he?

(Last answer read by the Reporter.)

Mr. Goodman: Maybe you had better read the question [fol. 123] and the answer.

(Last question and answer read by the Reporter.)

By Mr. Goodman:

Q. Was that true in the State of Michigan?

A. Yes.

Q. Prior to the time you became a citizen?

A. (No response.)

Q. You swore at the time you became a citizen that you would protect, uphold the constitution of the United States. Did you have any reservations in taking that oath about swearing to uphold the constitution of the United States, or did you believe that the way you were taking that oath was true?

A. I believe that oath was true.

Q. Did you believe you could uphold the constitution of the United States at the time you became a citizen? Did you?

A. (No response.)

Q. Can't hear you. You will have to answer.

A. Yes.

Q. Counsel has pointed out that in the petition for naturalization you stated that it was your intention in good faith to become a citizen of the United States and to "renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty of whom or which at this time I am a subject or citizen." You understand that? Was it your intention to renounce allegiance [fol. 124] to any foreign prince, potentate, state or sovereignty of which you were a subject or citizen? Do you understand the question or not?

A. I don't understand the question.

Q. Let me make it clear a little bit here. It isn't too clear I guess for anybody. When you became a citizen you had to swear that you intended at that time to become a citizen in good faith and to renounce—you know what "renounce" means? To give up all allegiance to any foreign power or state, or king or prince. Did you intend to do that at that time?

A. Yes, sir. Yes, sir.

Q. You also swore that for ten years you had—prior to the time you became—or filed this petition, that you had not been an anarchist. Had you ever been an anarchist?

A. No, sir.

Q. Did you ever—or that you were you not a believer in unlawful damage, injury or destruction of property. Had you ever believed in the unlawful damage or injury or destruction of property?

A. No, sir.

Q. Or sabotage? Did you ever believe in sabotage?

A. No, sir.

Q. Did you ever advocate sabotage?

A. No, sir.

[fol. 125] Q. And you also swore that you disbelieved in and were—or were not—rather, you swore you did not disbelieve in or opposed to organized government. Did you ever—

A. (Interposing) I didn't hear it quite.

Q. You swore you did not disbelieve in organized government or you were not opposed to organized government. You swore you opposed—pardon me. Start all over again.

At this time, you swore that you did not oppose organized government.

A. Still I don't get the question right.

Q. That is a double negative. It is a little confusing. At the time you became a citizen, you had to swear whether you supported organized government or whether you were opposed to organized government. Do you know what "organized government" means?

A. Explain it to me. I don't know.

Q. Organized government, if I can explain it to you—I don't know—is—

Mr. Hamborsky: (Interposing) Even on cross-examination, I don't think that is—

The Court: (Interposing) Well, now, is there any harm in his explaining what organized government is?

Mr. Hamborsky: No, there is no harm in that, your Honor, but—

[fol. 126] The Court: (Interposing) He may answer.

Mr. Hamborsky: There is a limit on the conditions. I mean, I don't want the words in this changed. Although he can—

The Court: (Interposing) He can't change something that is—

Mr. Hamborsky: (Interposing) No.

The Court: (Continuing) —that is in there, of course. When he does that, he will hear from the court.

Mr. Goodman: I am trying to—

The Court: (Interposing) Without any objection.

Mr. Goodman: I am trying to get his opinion at that time.

By Mr. Goodman:

Q. Well, organized government, roughly, is a society which has people who rule the society according to a certain form or rules, and the people in that society live in accordance with that method of organization. That is pretty rough. Do you understand that?

A. Yes.

Q. Well, did you believe in that kind of a society, where there was an organized government?

A. Yes.

Q. And you also said you were not a member of or affiliated with any organization which taught opposition to or [fol. 127] disbelief in organized government? In other words, you did not belong to an organization which was against organized government. Did you feel that that was a true statement at that time? What is your answer? You see, I can't hear you unless you speak. You nod your head and we can't hear that.

A. I say "Yes".

Mr. Goodman: All right. Is that the only ones you asked, Mr. Hamborsky?

By Mr. Goodman:

Q. Now, you also swore that you had been attached to the principles of the constitution of the United States. Had you been attached to the principles of the constitution of the United States?

A. What do you mean, "attached"?

The Court: He says he doesn't know what that is.

By Mr. Goodman:

Q. Do you know what the word "attached" means? That means did you support them, believe in them?

A. Yes, sir.

Mr. Hamborsky: I read 22, the last one.

By Mr. Goodman:

Q. Now, you filed an alien registration form. I think you saw this form. You filed a registration as an alien in 1940.

A. Yes, sir.

[fol. 128] Q. In that, this question was asked;

"I am or have been within the past five years or intend to be engaged in the following activities."

And then it says:

"List membership or activities in clubs, organizations or societies."

And you said:

"None".

That was in December, 1940. You had been a member of the Communist Party within just about two years before that, hadn't you?

A. Yes.

Q. Now, when it said "List membership or activities, organizations, clubs or societies," you didn't list the Communist Party, did you?

A. Well, they didn't list political parties, the Republicans or Democrats, and the Communist Party is a political party.

Q. In other words, you mean that when it says "clubs, organizations or societies" you assumed that they didn't mean political parties?

A. That is right.

The Court: What did he say about the "Democrats". Are they—

Mr. Goodman: (Interposing) He said—he agreed that [fol. 129] they are a political party, too.

The Court: Oh. I thought he said something else. I wanted to get that straight.

By Mr. Goodman:

Q. You also stated that within five years of 1940 you had not been affiliated with an organization devoted to in-

fluencing or furthering the political activities or public relations—or public policies of a foreign government: Did you believe that because you had belonged to the Communist Party that you were in an organization which furthered the political activities of a foreign government?

A. No, sir.

Q. So you said you had not been such a member; is that right?

A. Yes, sir.

Q. All right. In your preliminary form for petition and application for your certificate of arrival—this paper that was shown to you earlier that was filed in 1942—1940, the question was asked of you:

“Do you fully believe in the form of Government of the United States.”

A. Yes, sir.

Q. You answered:

“Yes”.

In your opinion, were you answering that truthfully?

A. Truthfully, yes.

Q. What, in your opinion, was the form of government [fol. 130] of the United States that you say you believed in? What was the form?

A. Form of United States Government is for people, and people—for people—I can't say. I'am getting dizzy.

Q. You don't feel—

A. (Interposing) I don't feel right.

The Court: Give him a drink of water there, please.

Mr. Goodman: Off the record, I might say yesterday in my office he got ill and had to go home. Apparently he gets ill.

The Court: That is all right. Take your time. I would like to get through with him, if I can, today.

Mr. Goodman: If I can, I would like to, too.

By Mr. Goodman:

Q. Do you feel as though you can answer these questions properly now?

A. I get dizzy. I don't know why.

The Court: Will you read—what is the last question there? It is only going to be a few minutes more. I would like to get through with you today, if I could, so you won't have to get dizzy next week.

By Mr. Goodman:

Q. When you stated you believed in the form of government of the United States, what did you mean by the form of government?

[fol. 131] A. I believe the government we got today, you know. What you mean, I believe in the government of United States?

Q. Well, this was in 1940. What form of government were you thinking of at that time?

A. The same government we have today, I guess.

Q. The same government we have today. That is the government you had at that time?

A. The only thing, at that time we was Democrats. Now Republicans.

The Court: No difference. Go right ahead. No difference in those things. All right. Go ahead.

By Mr. Goodman:

Q. You mean form of government?

A. Form of government.

Q. You were a believer in, not the specific—

A. (Interposing) Same thing.

Q. (Continuing) —administration that happened to be in power?

A. That is it.

Q. You stated that you were not a believer in anarchy; was that correct?

A. That is correct.

Q. And that you did not belong to an organization which taught or advocated anarchy?

A. That is right.

Q. Did the Communist Party ever teach or advocate anarchy?

A. No, sir.

[fol. 132] Q. Or did you ever teach or advocate anarchy?

A. No, sir.

Q. Also, you said you were not a member of a party which taught or advocated the overthrow of existing government in this country.

A. No, sir.

Q. Did you teach or advocate—

A. (Interposing) No, sir.

Q. (Continuing) —the overthrow or did you belong or intend to belong to an organization which did?

A. No, sir.

Q. Now, one question about your membership in the Communist Party. You say you left in 1938. You were no longer a member in 1938. What was the reason for that?

A. The reason for that was because the Convention, I think, that anybody who was alien, they take them out of the party. The foreigners, you know.

Q. After that decision was made, did you attend any more closed meetings of the Communist Party?

A. No, sir.

Q. Did you pay any dues to the Communist Party?

A. No, sir.

Q. I am talking about the period up to the time you became a citizen?

A. That is right.

[fol. 133] Q. You understand that?

Mr. Hamborsky: Now, I didn't get the answer as to that conference, as to why he left.

Mr. Goodman: Do you want the answer again?

(Last answer read by the Reporter as follows:

"A. The reason for that was because the Convention, I think, that anybody who was alien, they take them out of the Party. The foreigners, you know.")

By Mr. Goodman:

Q. You said "Anybody who was an alien"?

A. Alien.

Mr. Hamborsky: I didn't get that, whether he said "alien" or what it was, or what year it was.

Mr. Goodman: I don't know if he said. I will ask him.

By Mr. Goodman:

Q. Do you remember what year that was in?

A. Not exactly, but I think it was in 1938.

Q. It was after that that you were no longer a member of the Communist Party?

A. That is right..

Q. Up to the time you became a citizen?

A. Yes.

Mr. Goodman: That is all.

Mr. Hamborsky: Well, we would like to examine the witness.

[fol. 134] The Court: Go ahead.

Mr. Hamborsky: Should we continue? It will be several—

The Court: (Interposing) It won't take too long. I would rather get through with this man now, if I could. If it isn't too long. I don't want to hurry you.

Mr. Hamborsky: All right.

Recross-examination.

By Mr. Hamborsky:

Q. Now, this convention you just talked about where the Communist Party said they didn't want aliens or—

A. (Interposing) Well, in the convention they pass, I think, decisions, and on that decision, you know, was that aliens were left out from the Party.

Q. And when was that?

A. I don't remember the exact date, but I think it was in 1938. I am not sure.

Q. And where did you get that information?

A. Through the—what you call the unit.

Q. Unit?

A. Unit.

Q. The unit told you that?

A. Yes.

Q. Where did they get the information, if you know?

[fol. 135] A. Well, I don't know where they get information, but those decisions of the Party, they go down to small groups somehow.

Q. Where did they come from, to go down to the small groups?

A. That I don't know, how they come. By mail, I guess.

Q. From whom?

A. From the delegates, where they go down there.

Q. Who do they come from, up above?

A. I don't understand you.

Q. Well, these instructions, you say, come by mail. Where do they come from?

A. Well, the conventions, my knowledge of that, send delegates you know from different places, and these delegates come back, you know, and bring the decisions of the convention, and then go down to the lower branches of the—any party. Just like the Democrats or Republicans.

Q. Just like the Democrats and Republicans?

A. Yes, sir.

Q. That wasn't a decision that Earl Browder made in Moscow, Russia, was it?

A. I don't know.

Q. He made a decision like that at one time, didn't he?

A. I don't remember.

Q. Do you know what tie in, what relation there is between the Communist International and the Communist [fol 136] Party of the United States?

A. No, I don't know.

Q. You can't recall any book by name that you were familiar with during the time you were a member of the Communist Party; is that right?

A. That is it.

Q. Did you go to any schools—

A. (Interposing) No, sir.

Q. Did you go to—

The Court: (Interposing) Just a minute, please. Are you going to answer "No" regardless of what the question is? He hasn't asked the question yet. Wait until he asks you the question before you answer it.

By Mr. Hamborsky:

Q. Did you go to any schools that were organized, operated by the Communist Party of the United States?

A. No, sir.

The Court: Any time, any place; is that it?

A. That is it.

By Mr. Hamborsky:

Q. Any time, any place?

A. That is right.

Mr. Goodman: I assume now that this is prior to the year 1942 when he became a citizen; is that correct?

The Court: Well, all right. No, no. Well, you ask the questions. I don't know what you want to ask [fol. 137] here.

Mr. Hamborsky: Well——

The Court: (Interposing) No.

Mr. Goodman. In view of the ruling of the court, I assume——

The Court: (Interposing) No. Now, wait a minute, please.

Mr. Hamborsky: Let me again point out now, Judge——

The Court: (Interposing) He may be willing to answer some of this regarding the period after 1942, but if he is never asked it, why, it is all right.

Mr. Goodman: All right.

Mr. Hamborsky: Your Honor, may I comment on the Government's point on that particular issue?

The Court: What do you want to argue? I am willing to let you do whatever you want to do.

Mr. Hamborsky: We are still stymied by these two decisions on the earlier questions. I mean, so far as——

The Court: (Interposing) Do you want to ask it? Go ahead and ask the question, and then——

Mr. Goodman: (Interposing) All right.

The Court: Because I think you are agreed. I don't know. If you aren't let's find it out.

Mr. Hamborsky: Well, the Government's position is [fol. 138] that this is a continuing course of conduct even after 1942.

The Court: Then you insist on the question being asked?

Mr. Hamborsky: I insist on it being asked.

The Court: All right. Now, let's put the question again.

(Question read by the Reporter as follows:

"Q. Did you go to any schools that were organized, operated by the Communist Party of the United States?")

The Court: Any objection to it?

Mr. Goodman: If the question includes the period subsequent to April, 1942—

The Court: (Interposing) Now, listen to the question, please. Ask the question.

(Question re-read by the Reporter.)

Mr. Goodman: I object on the ground it does include the—

The Court: (Interposing) Certainly it doesn't exclude any time, from the beginning, since the day he was born up to the present. That is what the District Attorney intended. Isn't that true?

Mr. Hamborsky: That is right. That is the one I want answered.

The Court: In view of the decisions here, I have got [fol. 139] to rule that he can stand on his constitutional rights.

Mr. Goodman: For the period following his naturalization.

The Court: I can make no distinction.

Mr. Goodman: Allright.

The Court: I don't divide the question, because they don't.

Mr. Goodman: All right, then. If counsel insists on the question being asked, then I will—

Mr. Hamborsky: (Interposing) Well, you may as well put that on the record now.

Mr. Goodman: All right.

Mr. Hamborsky: Because in the next question I will limit it, but at least for the record I want an answer.

Mr. Goodman: All right. Witness, I again advise you, as I did before, concerning your rights under the Fifth Amendment. You remember my advice to you before?

A. Yes.

Mr. Goodman: In my opinion, this is another question you can refuse to answer for the same reasons, and the

answer to it might tend to incriminate you under the Fifth Amendment. You understand that?

A. Yes.

[fol. 140] Mr. Goodman: You can decide whether to answer the question.

A. I refuse to answer that question, because afraid intend to incriminate me.

The Court: Because—

A. (Interposing) Because intend to incriminate me, Fifth Amendment.

The Court: Well, I don't know. All right. I think I know what he means. I think it is sufficient. It has a tendency to incriminate, or might have a tendency.

Mr. Goodman: "Might tend"; I think they can use that expression. "Might tend to incriminate".

The Court: Yes; I know.

By Mr. Hamborsky:

Q. Mr. Polites, did you attend a school conducted and run by the Communist Party of the United States any time up and to April 6th, 1942?

A. No, sir.

Q. Now this—I would like to go back for a minute to this alien proposition that was proposed at this convention. Were you at the convention?

A. No, sir.

Q. You were not a representative of any fraction or unit?

A. No, sir.

Q. At the convention?

A. No, sir.

[fol. 141] Q. Do you know where the convention was held?

A. In New York, I think, but I am—in New York.

The Court: What year was this?

Mr. Hamborsky: He has stated he thinks it is 1938.

The Court: All right.

By Mr. Hamborsky:

Q. Since that—that could not possibly be 1940, or could it? Wasn't the convention in 1940?

A. I don't remember, sir.

The Court: What did he say?

Mr. Hamborsky: "I don't remember".

The Court: All right.

By Mr. Hamborsky:

Q. Do you know why aliens were asked to drop out of the Party at that time?

A. No, sir; no, sir.

Q. Isn't it true that they were asked to drop out because it might impair their getting their citizenship?

A. Make it plain. I still don't understand what you are talking about.

Q. You know what I am talking about. Isn't it true that the purpose of that was that alien members in the Communist Party were asked to drop out of the Party so that they could go through with their citizenship and then become members afterwards?

A. No, sir.

[fol. 142] The Court: You mean all aliens?

Mr. Hamborsky: All aliens who were members of the Communist Party.

The Court: Were asked to drop out when?

Mr. Hamborsky: Well, he puts it in 1938.

The Court: Around there. He was an alien?

Mr. Hamborsky: That's right.

The Court: All right. Was that why you dropped out?

A. No, sir.

The Court: All right. I want to follow the questions logically. That is what you were going to —

Mr. Hamborsky: (Interposing) I followed the question logically.

By Mr. Hamborsky:

Q. And I would like to ask you one more at this time: Whether or not you became a member after you got your citizenship in 1942?

The Court: He doesn't have to—same objection?

Mr. Goodman: It is objectionable.

The Court: And the same—

Mr. Goodman: (Interposing) It has already been asked and answered.

The Court: Same ruling. I am not going to ask the defendant to—

[fol. 143] Mr. Hamborsky: (Interposing) To state that again.

The Court: (Continuing)—to repeat it.

By Mr. Hamborsky:

Q. Well, you stated to Mr. Goodman that that was the reason you dropped out of the Party?

The Court: What was the reason?

Mr. Hamborsky: This convention directive.

The Court: That all aliens drop out.

Mr. Hamborsky: That all Communist members who were aliens drop out of the Party.

The Court: Did he say that, too? All right.

Mr. Hamborsky: Well, correct me if I am wrong. That is what I thought.

The Court: That is all right.

Mr. Goodman: That is correct. I don't object to the statement.

The Court: When you asked him if that is why he dropped out, he evidently was talking about or had in mind the other part of your question.

Mr. Goodman: Yes.

The Court: That is true. I can see that. All right.

By Mr. Hamborsky:

Q. But pursuant to that directive, that is why you personally left the Party in 1938?

A. No, sir.

[fol. 144] The Court: Go ahead and pursue it, if he has answered—if he answered that to the contrary.

By Mr. Hamborsky:

Q. Mr. Polites, on the examination by your counsel you were asked that question or a similar one to which you answered "Yes". Do you now change your mind and say "No"?

A. I say you got me confused.

The Court: Well, I will straighten you out. When Mr. Goodman asked you the question, or asked why you

dropped out of the Communist Party in 1938, or when you did, you said it was because of the directive from the higher ups telling all aliens to drop out of the Communist Party.

A. Yes.

The Court: Now, he asked you if that wasn't the reason that you dropped out, and you said "No".

A. Well, I didn't mean it.

The Court: I didn't think you did. Now, are you straightened out?

A. Yes.

The Court: The answer, then, to his question if that was the reason you dropped out—your answer is "Yes"?

A. Yes.

The Court: You dropped out of it because you were [fol. 145]told by the higher ups to drop out?

A. That is right.

The Court: All right.

By Mr. Hamborsky:

Q. All right, then, Mr. Polites, you didn't drop out because you had any difference in the aims and objectives of the Communist Party?

A. No, sir.

Q. And you held those aims and objectives of the Communist Party right up to and including April 6th, 1942?

A. Yes, sir.

Q. And you hold those aims and objectives today?

Mr. Goodman: Now, just a moment.

The Court: Just a minute, please.

Mr. Goodman: I am going to object and ask the court again to permit me to instruct the witness.

The Court: You won't have to. It is the same question, same line, and same objection. And I take it for granted, the same answer.

Mr. Goodman: I imagine so.

The Court: Without going over it in detail. No objection on the part of the Government?

Mr. Hamborsky: No objection at all, but I did want it on the record.

The Court: That is all right. You have the right to ask it, and, if he doesn't object, you may have the right to [fol. 146] get an answer.

It looks as though—how much longer are you going to be with this gentleman? Don't let me hurry you.

Mr. Hamborsky: Well, inasmuch as he has denied any knowledge of any pamphlets, leaflets or anything, he can't quote them by name, we would like to confront him with some of these as exhibits.

The Court: All right. Adjourn this case until Tuesday morning at 9:00 o'clock.

(Whereupon the hearing in this case was adjourned to Tuesday, July 21, 1953, at 9:00 o'clock A. M.)

[fol. 147]

Detroit, Michigan,
Tuesday, July 21, 1953,
9:00 o'clock A. M.

Court met pursuant to adjournment.

Parties present same as before.

The Court: Let's continue, gentlemen. You were practically through with this witness. I don't know whether you were through with him or not.

Mr. Hamborsky: We are almost through with him. Do you want the witness to take the stand?

The Court: Yes; certainly.

Mr. Hamborsky: Take the stand, Mr. Polites.

GUSS POLITES, the defendant herein, called as a witness by the Government for cross-examination, having been previously duly sworn, resumed the stand and testified further as follows:

Recross-examination (continued).

By Mr. Hamborsky:

Q. Now, Mr. Polites, I am going to ask you a few questions you might have answered last week to bring us up to date. It is my understanding that one of the activities

[fol. 148] you testified was part of the unit activities was in promoting drives and increasing the membership of the Daily Worker; is that correct?

A. I don't remember now.

The Court: What did he say?

(Answer read by the Reporter.)

The Court: Give me that question again, please.

(Last question read by the Reporter.)

The Court: And what is the answer?

(Last answer read by the Reporter.)

By Mr. Hamborsky:

Q. Do you remember that question or a similar question was put to you last Thursday when you were on the witness stand?

A. What question?

Q. The question is this: You testified that part of your unit activities when you were a member of the unit of the Communist Party of the United States, that part of the duties was to increase the circulation of the Daily Worker?

A. Yes.

Q. Now, I am going to show you this.

(Whereupon a copy of The Daily Worker was marked by the Reporter for identification as Government's Exhibit No. 4.)

By Mr. Hamborsky, continuing:

[fol. 149] Q. This document, and ask you if you can identify it? What is that document?

A. Well, my English are very poor.

The Court: What is it?

A. My English are very poor. I couldn't understand all that is here.

The Court: But the English in the Worker isn't very poor. You are reading from the Worker there, is that right?

A. I remember—

The Court: (Interposing) The English is pretty good, as I remember.

A. I remember Tom Mooney. We was working on Tom—to free Tom Mooney. I remember that.

By Mr. Hamborsky: /

Q. Well, do you know what this paper is?

A. The Worker.

Q. The Daily Worker?

(Whereupon the Exhibit was handed to Mr. Goodman.)

Mr. Goodman: Counsel showed me proposed Government's Exhibit 4. Before trying to read the whole document, which is rather long, if he will indicate to me which particular item he has in mind, I can confine my attention, perhaps, to that.

The Court: Do you have any particular part of it in mind?

[fol. 150] Mr. Hamborsky: The front page.

The Court: All right.

Mr. Goodman: Well, if the only purpose is to introduce it to show that this is a copy of the Daily Worker—if that is the purpose—

The Court: (Interposing) What is the purpose of introducing it?

Mr. Hamborsky: Well, it is a little more than that. This is an issue that was published while the defendant was a member of the Party, and there are certain parts on the front page, one of which he has already identified, that the Government would like to have him state that he knows.

Mr. Goodman: Well, I will—

The Court: (Interposing) Is there any objection?

Mr. Goodman: Well, if it is—until the witness identifies any particular item as an item which he is acquainted with or knows about, I will object to it as against him. If it is introduced as a copy of the Daily Worker issued at that time, and the witness has identified it as such, I have no objection to that.

The Court: Well, I think I know what is back of the introduction. I don't know if it carries a great deal of weight, any more than some of these papers that are known as [fol. 151] Republican or Democratic carry things that you,

as a leader of the other party or the other thinking, believe are absolutely outrageous, absolutely Communistic and socialistic, and against all fairness. I have seen articles in the Republican newspapers that I thought were just outrageous, and I have seen, and I know that you have probably seen articles in the Democratic papers you thought to be outrageous, that is, as far as your views are concerned.

It may be introduced. The mere fact a man supports a paper, that doesn't mean he supports everything in that paper. That may be the paper that is nearest to his views: that is all. I can see that.

It may be introduced. Now, of course, if that was the tenor running through—if there is something in there now, and that was the way every one of the papers came out, that might be different. But there is no evidence about that. And, of course, you can't write a letter to the editor every day and tell him, "I believe this side because that is the way I believe," you know.

By Mr. Hamborsky:

Q. Witness, I will ask you to state if that is—what the date and year of that particular—

The Court: (Interposing) Why don't you say "That paper dated so and so". He will be half an hour looking at that date, so let's—

[fol. 152]. By Mr. Hamborsky, interposing:

Q. Isn't that paper dated Saturday, April 27th, 1935?

A. Yes.

Q. And isn't it true that you were a member of the Communist Party of the United States on that date?

A. Yes.

Q. Now, I would like to have you read just this heading.

The Court: You read it for him. I am sure Mr. Goodman won't object to that.

Mr. Hamborsky: (Reading):

"Daily Worker. Central Organ Communist Party U.S.A. Section of Communist International."

The Court: All right. What about it?

Mr. Hamborsky: I would like also to have the following notation: That in between the "Daily" and the "Worker" is a symbol of the hammer and sickle.

By Mr. Hamborsky:

Q. Now, Mr. Polites, is that also the symbol that was found on the dues stamps that you paid when you paid your membership dues?

A. Yes, sir.

The Court: What did he say, please?

Mr. Hamborsky: "Yes, sir."

Mr. Goodman: May I see it?

(Exhibit handed to counsel.)

The Court: All right, gentlemen.

[fol. 153] Mr. Hamborsky: That is the only purpose of entering it.

The Court: Is that all for this?

Mr. Goodman: I am just looking at it.

Mr. Hamborsky: Yes.

Mr. Goodman: You don't mind my looking at it, do you?

Mr. Hamborsky: That is all there is to it.

Mr. Goodman: Well, there is a lot more to it.

Mr. Hamborsky: Well, I mean you wanted to know the Government's purpose.

Mr. Goodman: Yes. I see. I may want to use it myself.

By Mr. Hamborsky:

Q. Now, Mr. Polites, I asked you last Thursday if you knew the relationship between the Communist Party of the United States and Communist International. Do you?

A. No.

Q. Did you know that there was some connection?

A. I don't remember.

Mr. Goodman: What was the answer?

(Answer read by the Reporter.)

By Mr. Hamborsky:

Q. Now, getting back to the activities of the various branches that you were a member of, did you hold any office outside of the unit in respect of the Fraction?

[fol. 154] Mr. Goodman: Just a moment. Would you read that question back to me?

(Question read by the Reporter.)

Mr. Goodman: I thought we had gone through his officer-ship in the Fraction last time.

The Court: I thought we did.

Mr. Goodman: In quite detail.

The Court: Two or three days have intervened. You may have an answer. Did you belong to—has he said he was a unit officer, in the unit?

Mr. Hamborsky: Yes.

The Court: Did you have any other office, Fraction, District, National, International, State, anything else?

A. Yes.

The Court: Besides being on the Committee in the Unit, wasn't it?

Mr. Goodman: Committee in the Fraction, I believe.

Mr. Hamborsky: He was the General Secretary of the Fraction, I believe his testimony is.

The Court: He was also on the Committee of the Unit, wasn't he?

Mr. Hamborsky: The organizational committee.

[fol. 155] The Court: Besides those two offices, at any time, any office or committee, of the Communist Party of America?

A. Outside of these two, I don't remember to be any other officer.

The Court: What is that?

(Answer read by the Reporter.)

By Mr. Hamborsky:

Q. Were you ever a member of a Bureau?

A. Yes.

Q. What Bureau was it? What Bureau were you a member of?

A. The Fraction.

The Court: What did he say?

By Mr. Hamborsky:

Q. Of the Fraction?

A. Yes.

Q. Is that the same Fraction you were the General Secretary of?

A. Yes, sir.

Q. Did your term of office—cross that. Were you a member of the Bureau for a longer period of time than you were the General Secretary of the Fraction?

A. Yes, sir.

Q. And how long was that?

A. I don't remember the exact time.

Q. Would it be until 1938?

A. No.

Q. 1937?

A. I don't remember, sir.

[fol. 156] Q. Now, Mr. Polites, let's get back to some of the meetings in the unit. Did you also discuss the Lenin Memorial?

The Court: What? What is that, please?

Mr. Hamborsky: The Lenin—

The Court: (Interposing) Oh. Memorial. All right.

A. I don't remember, sir.

The Court: What is his answer?

(Answer read by the Reporter.)

By Mr. Hamborsky:

Q. Did you discuss the books and writings of Lenin?

A. (Shakes head negatively.)

Q. What is the answer?

A. I don't remember.

Q. Do you know who Lenin was?

A. He was a Russian.

Mr. Goodman: He was a what?

The Court: Russian.

By Mr. Hamborsky:

Q. Did you in either your unit meetings or your fraction meetings, or any meetings that you attended of the Communist Party, ever discuss the writings of Lenin?

A. I don't remember. That time was mostly unemployed people, and the most things we were discussing how we would be able, you know, to get relief, how we would be able to organize ourselves, and get some way, you know, [fol. 157] to the welfare, because we was ashamed, you know, to go to the welfare. We try, you know to under-

stand the use of the day and how to be able to live and exist, because was depression. And I don't remember we discussed, you know, any theoretical books or anything like that of the kind.

Q. Then your answer is no, that you did not discuss the Lenin books?

A. I don't remember, sir.

Q. You don't remember. Now, at that time that you were a member of the unit, did you receive a publication entitled "Empreacor," (?)

A. I don't remember anything like that.

Mr. Hamborsky: That is all with this witness.

Mr. Goodman: Just a few questions.

Re-cross examination.

By Mr. Goodman:

Q. I want to clarify one point in your testimony. I am not sure it was made clear previously. As I understood you, your testimony, you said that you were unemployed for the period of 1931 or 1932 until approximately 1937 or 1938.

A. I have part jobs.

The Court: I don't get that.

A. I have part jobs, and also I was on welfare for quite some time.

[fol. 158] The Court: He had what?

Mr. Goodman: Part jobs.

A. Part jobs; yes.

By Mr. Goodman:

Q. By "part jobs", what do you mean?

A. Where I was working two months here, two weeks here, and things like that.

Q. You mean you didn't have a steady job?

A. I didn't have the steady job.

Q. During that period of time were you on WPA, too?

A. Yes, sir.

Q. And when did you finally get a steady job, as you remember?

A. In 1937, I believe.

Q. Somewhere around 1937?

A. Yes.

Q. Have you had a steady job since then?

A. Yes, sir.

The Court: Where does he work?

By Mr. Goodman:

Q. Where do you work now?

A. I am self-employed.

Q. What do you sell?

A. I sell hams.

The Court: Sells what?

A. Hams.

The Court: H-a-m-s?

Mr. Goodman: Off the record.

[fol. 159] (Discussion off the record.)

By Mr. Goodman:

Q. How long have you been in this business?

A. About five years.

Mr. Goodman: No further questions.

Mr. Hamborsky: That is all from you, Mr. Polites.

The Court: All right.

(Witness excused.)

The Court: Call the next witness.

Mr. Hamborsky: Leo Syrakis.

[fol. 160] LEO SYRAKIS, a witness called on behalf of the Government, having been first duly sworn by the Court, testified as follows:

Direct examination.

By Mr. Hamborsky:

The Court: Your name?

A. Leo Syrakis. S-y-r-a-k-i-s.

The Court: S-y-r-a-k-i-s/ And how do you pronounce it?

A. Syrakis.

The Court: They get to that in some way. I don't know. But it is all right. If that is the way you pronounce it, that is the way.

A: That is right.

The Court: All right. All right. Excuse me a minute, will you?

(Short intermission.)

The Court: All right, gentlemen. Let's proceed.

By Mr. Hamborsky:

Q. What is your name, witness?

A. Leo Syrakis.

Q. And where do you live?

A. 609 Monroe.

The Court: Witness—

[fol. 161] Mr. Hamborsky: (Interposing) You will have to—

The Court: (Interposing) Just a minute, please. You will have to keep your voice up. Unless you want me to close all the windows and close off the fan, you will have to talk up, because I want to hear you and I am sure Mr. Goodman wants to hear you.

Mr. Hamborsky: What was that last question?

(Last question and answer read by the Reporter.)

By Mr. Hamborsky:

Q. Is that in Detroit, Michigan?

A. Yes, sir.

Q. And how long have you lived in Detroit, Michigan?

A. Since 1923.

Q. And what do you do, Mr. Syrakis?

A. I am a co-partner in a grocery and baking business.

Q. And how long have you been in that line of work?

A. I have been since 1945.

Q. Where were you born?

A. In Chios, Greece.

Mr. Goodman: Where was that?

A. Chios, Greece. C-h-i-o-s.

The Court: Where does he say?

Mr. Hamborsky: Chios, Greece. C-h-i-o-s, Greece.

[fol. 162] The Court: All right.

By Mr. Hamborsky:

Q. When did you arrive in the United States?

A. 1920.

Q. And when did you—oh, are you a citizen of the United States?

A. Yes, sir.

Q. When did you become a citizen?

A. 1948.

Q. And you say that you have lived in Detroit since 1923?

A. Yes, sir.

Q. Where you ever a member of the Communist Party?

A. Yes, sir.

Q. When and where did you join?

A. I joined right here in Detroit in 1935, first part of 1935.

Q. How did you get into the Party?

A. Guss Polites introduced me to the Communist movement, took me up to the Greek Workers Club.

The Court: Give me that again, please.

(Answer read by the Reporter.)

A. Guss Polites introduced me to the Communist movement and introduced me to the Greek Workers Club, and that is where I joined the Communist Party.

By Mr. Hamborsky:

Q. Do you see Guss Polites in the court room today?

A. Yes, sir; on the right side.

[fol. 163] Mr. Hamborsky: Would you let the record show that the witness identified the defendant.

By Mr. Hamborsky:

Q. Where did you join? In Detroit, but was it a unit or fraction of what branch of the Communist Party did you join?

A. When I joined the Communist Party, I was assigned to the Unit 3 of Section 6.

Q. And where was that unit located?

A. It was located in downtown, east of Woodward.

Mr. Goodman: What was the last answer?

(Answer read by Reporter.)

By Mr. Hamborsky:

Q. Was Mr. Polites a member of that unit when you joined?

A. Yes, sir; he was a member there.

Q. Was Mr. Polites one of the—one of your sponsors?

A. Yes.

Mr. Goodman: Well—

By Mr. Hamborsky, interposing:

Q. When a man—or when you became a member of the Communist Party, who was the organizer or the president or the top official in the unit?

A. It was Jim Callas.

The Court: Who?

A. Jim Callas. Callas. C-a-l-l-a-s.

The Court: Is that the last name?

A. Yes, sir.

[fol. 164] The Court: Did he call the first name "Kim"? K-i-m?

Mr. Fordell: Jim.

A. Jim.

The Court: Oh. Jim Callas. Did he say "C" or "K"?

Mr. Hamborsky: C-a-l-l-a-s.

By Mr. Hamborsky:

Q. Do you know, of your own knowledge what position Mr. Polites held?

A. He was the Agitprop Director.

Q. Of the unit?

A. Of the unit.

The Court: What did he say?

By Mr. Hamborsky:

Q. And what do you mean by "Agitprop Director?"

A. The Agitprop Director was to direct the education among the unit members.

Q. And what were his duties in that position?

A. Well, he had the duty to orientate the members of the unit for the—in the Communist movement.

Q. Were you ever at a meeting; a closed meeting, of the Communist Party with Guss Polites?

A. Yes.

Q. How many times?

A. Oh, many times.

[fol. 165] Q. And were you ever in a closed meeting when Mr. Polites performed his duties as Agitprop Director?

A. Yes, sir.

Q. What did you hear him say?

Mr. Goodman: Let's have the time and place, please.

By Mr. Hamborsky:

Q. Well, when was it Mr. Polites was the Director of Agitprop—Agitprop Director? What period of time? What years or year?

A. It was the first part of 1935.

Q. And where would you meet?

A. In the different Party members' rooms.

Q. By "rooms", you mean homes?

A. Homes, yes.

Q. And was it during that early part of 1935 that you were present when Mr. Polites conducted these Agitation and Propaganda meetings?

A. Yes, sir.

Q. Now, what did he say?

Mr. Goodman: Well, just a moment. I think I am entitled to know as closely as possible the date and place when he said—or the witness claims he said it. He is testifying to a conversation that happened some place and somewhere.

By Mr. Hamborsky:

[fol. 166] Q. Can you locate the place that Mr. Polites made statements in his capacity as Agitprop Director?

A. Yes, sir. It was in the home of Party member Harry Price, that was living at 60 East Lafayette—or 600 East Lafayette.

Q. Harry Price?

A. That is right.

Q. 600 East Lafayette?

A. Yes.

Q. Any other place?

A. Also in my own room on 914 Monroe Avenue.

Q. And both of those addresses are in the City of Detroit?

A. Yes, sir.

Q. Do you know the time, the month and date, if possible?

A. Well, usually we met at 8:00 o'clock in the evening, and—

Q. (Interposing) Did you have a scheduled day for meeting?

A. Yes, we usually had one day for meeting, had it 8:00 o'clock in the evening every week.

Q. Was it on a Tuesday?

A. Yes, I believe it was Tuesday.

Q. You remember the day; to the best of your knowledge it was Tuesday?

A. Yes, sir.

Q. Do you know what month?

A. It was from January and on.

Q. All right. Now, was this Harry Price address the first [fol. 167] place that you heard Mr. Polites talk?

A. No; that was in my own room.

Q. That is in your own room?

A. That was in my own room.

Q. Can you give me the approximate date when that was?

A. That was in January, 1935.

Q. And what did Mr. Polites say?

A. Well, he agitated the unit members how to become better Communists in order to carry on the workers—the workers—the class struggle and gradually overthrow the present system by force and violence.

Q. Did he actually use those words?

A. Yes, sir.

Q. On any other occasion did you hear him use those words?

A. Yes; he spoke in the Greek Workers' Club many times.

The Court: The Greek Workers' Club?

A. Club.

By Mr. Hamborsky:

Q. Yes. And what were the words he used there?

A. He used the words to—how to organize the Greek—the Greek Workers, and all the workers of the land, to better themselves and extend the existence of the class struggle, and gradually strengthen themselves and gradually overthrow the present system by force and violence.

Q. By "present system", what do you mean?

[fol. 168] A. The—

Mr. Goodman. (Interposing) Just a moment.

A. The existing government of the United States.

Mr. Goodman: I object to his version of what—

The Court: (Interposing). He can tell what said. But how could he tell what he meant, unless—I think the court has a pretty good idea of what is meant by "force and violence" and by "the present system".

Mr. Hamborsky: But I believe he answered that.

The Court: Yes. The question was his version of what is meant by "present system". Isn't that it?

Mr. Hamborsky: That is what he said, and he answered it.

Mr. Goodman: I will ask that it be stricken then, because I think the question was objectionable.

The Court: Which one?

Mr. Goodman: As to what the witness thought the speaker meant, when he used—

The Court: (Interposing) Yes. I think it is objectionable. I will strike it.

Mr. Hamborsky: Well, I didn't use the word, your Honor. He used the word "present system" and I asked what he meant by that.

[fol. 169] The Court: What he meant?

Mr. Hamborsky: Yes.

The Court: He didn't—

Mr. Goodman: (Interposing) The witness was testifying—

The Court: (Interposing) He didn't use the word. It came from Polites, as I—all right, go ahead. If you want to inquire further, go ahead.

By Mr. Hamborsky:

Q. Well, did Mr.—what were the exact words Mr. Polites used?

A. The exact words was the strengthening of the working class, to fight, to cause trouble and gradually strengthen themselves in order to overthrow the present government by force and violence.

Q. Did Mr. Polites ever say how he or the Party planned to do this?

A. Yes.

Q. You were present?

A. Yes, sir.

Q. What did he say?

Mr. Goodman: I would like to get the time and place of this statement, your Honor please.

By Mr. Hamborsky:

Q. Was this the same time as when he made these other statements?

A. Yes, sir.

[fol. 170] Mr. Goodman: Well, if your Honor please, there is no indication in the witness' testimony as to whether he said them on different occasions from January 1935 on up to the present date, or from January to March, or to any particular time. I think I am entitled to know when he said it.

The Court: He gave the space within which the meetings were held, and he said that at different times these remarks were made.

Mr. Goodman: But he—

The Court: (Interposing) That is the way I understand it.

Mr. Goodman: He said the meetings—he said they occurred from January, 1935, on. Now—

The Court: (Interposing) On to what?

Mr. Hamborsky: Well—

Mr. Goodman: (Interposing) He claims they occurred—

Mr. Hamborsky: (Interposing) That is what he says, at first. But then when I began to get him down to the year, he specified January, 1935, in his home and in the home of Harry Price. That is my understanding of the testimony.

Mr. Goodman: If the witness means he is testifying to something in January, 1935, at his home and Price's, then [fol. 171] I think that is sufficient.

The Court: And to what?

Mr. Goodman: Then I think that is fairly definite, at least.

The Court: That is what I thought.

Mr. Goodman: If that is what he means. I don't know if that is what he means.

By Mr. Hamborsky:

Q. Isn't that what you said, Mr. Syrakis?

A. Yes, sir. That is what I meant.

Mr. Hamborsky: Would you read the last question?

(Last question read by the Reporter.)

A. Yes, it was.

By Mr. Hamborsky:

Q. What was his statement? What did he say?

A. He say the way to organize, agitate—agitate the workers, organize them, in order to follow up when the time comes to overthrow the government by force and violence.

Mr. Goodman: Read the last part of that back to me, please.

A. All right.

(Last answer read by the Reporter.)

By Mr. Hamborsky:

Q. Did he ever say in your presence the methods that he was going to use?

A. Well, the only method he said was by force. He said [fol. 172] that we, the workers, would never be able to get in the Government by vote.

Mr. Goodman: What is that?

The Court: By vote. He says it wouldn't be possible to arrive at the desired goal, or something to that effect, by vote. It would have to be by force and violence. I think that is what he said; if I am wrong, correct me.

By Mr. Hamborsky:

Q. That is what you said, wasn't it?

A. Yes.

The Court: He said "Yes".

By Mr. Hamborsky:

Q. Did he ever—that is, Mr. Polites, did he ever mention in your presence how he would organize these people, either the Communist Party members or the citizens?

A. Well, the Communist Party members has to be—had to be the leaders, the directors, among the public, to organize the different groups, the societies and unions and different other mass organizations, in order to direct them. The Party members was supposed to be the directors or the leaders of that movement.

Q. Did he ever discuss the Lenin Memorial?

A. Yes, sir; he did.

Q. Did you discuss the Marxian theory?

A. Yes, sir.

Q. Did you discuss the relationship—strike that. Did you [fol. 173] ever hear Mr. Polites mention the relationship between the Communist Party of the United States and the Communist International?

A. Yes, sir.

Q. When and where?

A. At the unit meetings.

Q. Was it these same unit meetings that you have identified before?

A. Yes, sir.

Q. And what did he say about that relationship?

A. That we were getting the publications of the Third International in the meetings, and every time we meet that we are supposed to discuss the different Party positions of the Third International. That as the Agitprop Director he had to explain the position and the strength and the

weakness of the different party—of the different parties of the Third International in order we to get lessons from the strength and figures of the different parties of the Third International.

Q. Now, the Third International, that is what you mean when I ask you about the Communist International?

A. Yes, sir.

Q. Then, as I understand it, you heard him make these statements of what the Third International proposed?

A. Yes.

[fol. 174] Q. Now, these were unit meetings; is that correct? That you have testified to up until now?

A. Yes, sir.

Q. Do you know of Guss Polites' activities in the Greek Fraction?

A. Yes, sir.

Q. What were they?

A. When I joined the Communist Party in Detroit, he was the General Secretary of the Greek National, the Greek Bureau, of the Greek Fraction.

Q. Did he make the same or similar statements in those meetings?

A. Yes, sir.

Mr. Goodman: Well, just a moment. The witness hasn't testified he attended any meetings of the Greek Fraction.

By Mr. Hamborsky:

Q. Did you attend any meetings of the Greek Fraction with Mr. Polites?

A. Every week.

Q. When you became a member of the Greek Fraction, who was the head of the Fraction?

A. Guss Polites.

Q. And what was his position?

A. It was as the General Secretary, the director of all the Greek activities in the Communist Party of the United States.

[fol. 175] Mr. Goodman: Would you read that answer back?

(Last answer read by the Reporter.)

A. In the District.

By Mr. Hamborsky:

Q. And by the "District" you mean Detroit or Michigan?

A. Michigan.

Q. Michigan. What position did you hold in the Greek Fraction?

A. When Guss Polites was Secretary, General Secretary, I was a member of the Bureau.

Q. And of what Bureau?

A. The Bureau was committee of five members in the Greek Fraction.

Q. And what were their responsibilities and duties?

A. Their responsibilities were to discuss all the National, Greek National problems in the United States, and also the local problems from the District Committee.

Q. Now, how long after you became a member of the Greek Fraction was Mr. Polites the General Secretary? For how long a period after you became a member?

A. Oh, Polites—I succeeded Polites as a Secretary of the Bureau after a month.

Mr. Goodman: What is that?

Mr. Hamborsky: He succeeded Polites as a member of the Bureau after a month.

[fol. 176] By Mr. Hamborsky:

Q. Did you also become General Secretary?

A. Yes, sir.

Q. Of the Greek Fraction. Now, as General Secretary, were you a member of the Fractional Bureau?

A. The—

Q. (Interposing) Of the Bureau?

A. Yes, sir.

Q. And who were—was Guss Polites also a member of that Bureau?

A. He was.

Q. Now, what were the duties of the General Secretary?

A. The General Secretary was the director of the whole movement. He carry the orders from the National office, was responsible for the Greek Communist paper, and all of the different issues that were arising in that period.

Q. Who did you make your reports to, when you were General Secretary? Who were you responsible to?

A. On the local issues, I was responsible to District Committee. On the National, it was responsible to the National Committee which was a part of the Central Committee of the C.P. of United States.

Q. And do you know of your own knowledge whether those same duties and responsibilities were held by Mr. Polites?

A. Those same duties were held before me.

Q. So he did the same things before you became General [fol. 177] Secretary?

A. Yes, sir.

Q. How long after you became General Secretary did Mr. Polites continue on as a member of the Bureau?

A. He was a member of the Bureau all the time I was a member of the Communist Party from January until September of 1935.

Q. Now, during that period of time, did you ever see Mr. Polites pay his Communist Party dues?

A. Yes, sir.

Q. Was it at these homes that you mentioned where the units met?

A. Yes, sir.

Q. Did Mr. Polites ever work for you?

A. Yes, sir.

Q. When and where?

A. I had a bakery and he was a driver.

Q. How long did he work for you?

A. About ten months.

Q. Now, how many meetings of the Greek Fraction did you attend with Mr. Polites?

A. Oh, it is many meetings, because we had meetings at least three or four times a month, all the time I was in the Party.

Q. And where would they meet?

A. We had the meetings over on the third floor of the [fol. 178] Greek Educational League.

Q. Do you know what street that is?

A. That is 1314 Randolph.

Q. City of Detroit?

A. Detroit.

Q. Now, did you ever attend meetings with Guss Polites at the Finnish Hall?

A. Yes, sir; it is the general membership meetings.

Q. What is a general membership meeting?

A. It is a meeting, general membership meeting of the District, closed meetings, to the Party members only.

Q. And where is Finnish Hall?

A. It is Fourteenth and McGraw.

Q. Was Mr. Polites ever a speaker at one of these meetings?

A. Not at the Finnish Hall.

Q. Was he a speaker at the Greek Educational League at 1314 Randolph Street?

A. Many times.

Q. And was that a closed meeting?

A. It was a closed meeting and open meetings.

Q. And was Mr. Polites a speaker there?

A. Yes, sir.

Mr. Goodman: I don't think it is clear to me what a closed meeting of this Greek Educational League is.

[fol. 179] A. No, closed meeting of Communist Party.

Mr. Goodman: You were referring to some other organization when you asked these last questions.

Mr. Hamborsky: I asked if he had ever heard Mr. Polites address the Greeks at the Greek Educational League, and I asked him where it was, and he stated where it was.

Mr. Goodman: Does your question refer to a meeting of the Greek Educational League or of the Communist Party?

A. The Greek Educational League meetings were held on the second floor. Communist Party meetings were held on the Third floor, the same building.

By Mr. Hamborsky:

Q. The same building?

A. Yes, sir.

Q. All right. Now, did you ever hear Mr. Polites address a closed meeting of the Communist Party? That is on the third floor.

A. Yes, sir.

Q. And what did you hear him say?

Mr. Goodman: May I have the time and place?

By Mr. Hamborsky:

Q. What year was this?

A. It was 1935.

Q. Do you know what month?

A. That was in April and May, we have campaign for [fol. 180] the publication of the bi-weekly Enbrosse (?), the official newspaper of the Greek—Greek Section of the Communist Party.

The Court: What was the name of it?

A. Enbrosse. Forward. Enbrosse.

The Court: Enbrosse?

A. Enbrosse.

By Mr. Hamborsky:

Q. How is that spelled?

The Court: What does that mean?

A. "Forward".

The Court: I got the "Forward" part, but the——

A. (Interposing) That is what the "Enbrosse" mean.

The Court: Oh, oh, I see. "Enbrosse" means "Forward".

A. "Forward".

The Court: I see.

By Mr. Hamborsky:

Q. This was April and May, 1935. What did he say?

A. We had this campaign for the bi-weekly paper, and he spoke very ardently to the members that we had to go ahead and subscribe and get the money that we supposed to collect in order to reach them workers and wait in our movement until the time comes when we would be able to overthrow the present government by force and violence.

Q. And you heard him say that at a Greek Fraction meeting?

[fol. 181] A. Yes.

Q. Do you know about Mr. Polites' activities in regard to this Food Workers' Union?

A. Yes. He was very active member of the Food Workers' Union even before I joined the Party and continued in the same movement when I was in the Party.

Q. And do you know—do you know of your own knowledge when this union was organized and how?

A. The union was organized by the Communist Party members. It was a part—

Mr. Goodman: (Interposing) Just a moment. Unless the witness knows of his own knowledge—even though he has said so, his answer doesn't indicate it consists of more than a conclusion on his part.

Mr. Hamborsky: I asked if he knew of his own knowledge.

The Court: He said he knew it. Now, you may inquire as to how. Of course, you may inquire as to how; and if he doesn't know of his own knowledge I will strike it out, Mr. Goodman.

Mr. Hamborsky: I will strike the last question entirely.

The Court: Withdraw the question?

Mr. Hamborsky: Yes. I will withdraw the question.

[fol. 182] The Court: And answer. All right.

By Mr. Hamborsky:

Q. Now, during the time that you were a member of the Communist Party, did you attend any functionary meetings of the Party with Mr. Polites?

A. Yes; I attended two meetings.

The Court: Do you know what he means by "functionary" meetings?

By Mr. Hamborsky:

Q. Do you know what I mean by "functionary" meetings?

A. Office holders of the Communist Party.

The Court: I thought he didn't. At least, that isn't what I mean by "functionary", now.

By Mr. Hamborsky:

Q. Well, now, is "functionary" a word, a term used by the Communist Party in its structure?

A. "Functionary" word means the Party, the Party members who hold position in the party.

The Court: Oh, I see. All right. If that is what you mean.

By Mr. Hamborsky:

Q. And where were those held?

A. One meeting held at Chene and Lafayette, in the Roumanian Hall.

Q. Yes.

The Court: What hall was that?

A. Roumanian Hall, Chene and Lafayette. The other meeting was held at the Lithuanian Hall—Lithuanian Club [fol. 183] on Twenty-Eighth Street.

The Court: Lithuanian?

A. Lithuanian.

The Court: We have the Greek, we have the Roumanian, and we have the Lithuanian and Finnish so far.

A. Yes.

The Court: Is that right?

A. The clubs, halls.

By Mr. Hamborsky:

Q. Now, what was the purpose of this functionary meeting?

A. It was the plan meeting, meet convention, the Districts, to have meetings, at least meet in conventions in order to orientate functionaries of the District with the new policies and also to have reports from them in the various fields in this state.

Q. And what—do you know what capacity Mr. Polites was there?

A. Yes. He was in the capacity as a member of the Greek Bureau.

Q. And what were some of the policies formulated at this meeting?

A. It was the policies of the united front, in order to organize Labor Party in the State of Michigan.

Q. And what was said about how they were going to organize this united front?

Mr. Goodman: Is this a statement by Mr. Polites that the question refers to?

[fol. 184] Mr. Hamborsky: No.

By Mr. Hamborsky:

Q. Mr. Polites was present there, was he not?

A. Yes, sir.

The Court: Was this man?

By Mr. Hamborsky:

Q. You were there also?

A. Yes. I was there and Guss Polites and Harry Price, three of us, three Greek members. We represent the Greek Bureau and Harry Price represented the Section 6 which he was committee member then.

Q. Well, I will re-ask that question.

Mr. Goodman: Well, if it is tending to ask what somebody said, I would like to know who it was.

The Court: What is it? What is the question? Is it about a policy that was adopted there?

Mr. Hamborsky: Yes.

The Court: Do you know what policy was adopted at that meeting?

A. It was adopted a policy whereby—

The Court: (Interposing) Just a minute, please. Do you know what it was?

A. Yes.

The Court: All right. I will permit him to tell what it was.

Mr. Hamborsky: Well, he stated that. He stated—all [fol. 185] right.

By Mr. Hamborsky:

Q. Go ahead and answer that, then.

A. We adopted the policy to organize the different organizations in order to organize and utilize them and make the first movement and make the nuclei of the Labor Party, which the Communist Party members should control. We had different meetings there, those types.

Q. Now, Mr. Syrakis, when you were the General Secretary of the Greek Fraction, did you make reports to the District office?

A. Yes, sir.

Q. And the National offices also?

A. Yes.

Q. And did you receive instructions on the conduct of your activities?

A. Yes, sir. I received instructions every month from the National office of the C.P.

The Court: Of what?

A. From the National office in New York.

The Court: Do you know the address of the National office in New York?

A. Yes, that was the headquarters of the Greek Workers, Greek Communist Paper, Enbrosse.

The Court: The headquarters—do you mean the National office of the Communist Party of America, or the Greek branch?

[fol. 186] A. The Greek branch of the Communist Party.

The Court: Was that the same office, located where the paper was located in New York City?

A. New York City.

By Mr. Hamborsky:

Q. And that paper was the official organ of the Greek Fraction in the United States of the Communist Party?

A. Yes, sir.

Q. And is that the paper that you referred to when you stated that Mr. Polites tried to sell and distribute the newspaper?

A. Yes, sir.

Q. When you were General Secretary of the Fraction, do you know the names of people that you received your instructions from?

A. Yes, sir.

Q. What were their names?

A. General Secretary of the Greek Fraction, National, was in New York, was Harry Horasiades.

The Court: Was whom?

A. Horasiades.

By Mr. Hamborsky:

Q. How do you spell that?

A. I don't remember.

Q. He can spell it.

The Court: Have him write it down. He may be able to write it down better than he can spell it. Can you write it down?

[fol. 187] A. Yes, sure.

The Court: That is the best way. Of course, don't write it in Greek letters, or I won't be able to read it.

A. (Writing).

The Court: H-o-r-a-s-i-a-d-e-s.

By Mr. Hamborsky:

Q. What is his first name?

A. Harry.

Q. Now, this Harry Horasiades—

A. (Interposing) Horasiades.

Q. Horasiades. What was his position in the Communist Party of the United States, if you know?

A. It was the General Secretary of the Greek Branch of the Communist Party of the U.S.A.

Q. And when did you leave the Communist Party?

A. September, 1935.

Q. And would you state to the court the occasion by which you left the Communist Party?

A. Because I was—as organizer of the Greek Workers Club, I was a delegate to the National Convention of the Greek Workers Educational League in Pittsburg, held in Pittsburg, and during that period they had to change or re-name the Greek Workers Educational League.

The Court: What is that?

A. Re-name the—

[fol. 188] Mr. Hamborsky: (Interposing) They had to re-name the Greek Workers Educational League.

The Court: Oh, re-name the League.

A. Yes.

The Court: All right.

A. And I was delegated to that convention, which held in Pittsburg.

The Court: Held where?

A. In Pittsburg, Pennsylvania.

The Court: Oh, Pittsburg?

A. Yes. And during that convention, I spoke against the—against the policies of the top leadership of the Greek National office and I was almost out of the convention.

The Court: What was the last?

A. They adopted a resolution to oust me from the convention floor the first day I spoke.

The Court: You were kicked out?

A. Yes.

The Court: According to you?

A. Yes.

By Mr. Hamborsky:

Q. Did you ever have a trial?

A. We had a trial here in Detroit when I returned from Pittsburg.

Q. Who summoned you at that trial?

A. Well, Guss Polites called the meeting, and Horasiades [fol. 189] was chairman.

Q. And this Horasiades is the same one who was the head of the United States Communist Greek Fraction movement?

A. Yes.

Q. All right. Now, this meeting that you were summoned to, what kind of a meeting was it?

A. That was a trial. That was a trial to—in order to oust me from the Party.

Q. Well, there was only Communists there? It was not a trial in Detroit, like—

A. (Interposing) No.

Q. The citizens of the City of Detroit, or anything like that?

Mr. Goodman: I will stipulate it was not a court trial, in this community.

A. It was a trial—it was a trial only from the Communist Party members. They are supposed to oust me from the Communist Party first and then from the mass organizations at which I was organizer, president of the Club.

Q. And what were the charges placed against you?

A. The charges were immorality.

The Court: What is that?

By Mr. Hamborsky:

Q. Immorality?

A. Yes. And insubordination.

Q. Were there any others?

A. Those were the main charges.

[fol. 190] The Court: What charge of immorality did they have against you?

A. They claim that when we went to Pittsburg we went together with friend of ours, and they claim we went out with two ladies that they were also at the convention.

By Mr. Hamborsky:

Q. Well, they charged you with bourgeoisie tendencies.

A. Oh, yes.

Mr. Goodman: Just a moment.

A. They did.

Mr. Goodman: I think counsel is testifying now.

The Court: Yes.

Mr. Goodman: In the record.

The Court: Let the witness testify. Don't have counsel—that may be stricken.

Mr. Hamborsky: It is a leading question.

The Court: Leading question? That isn't a leading question. That is a statement by counsel.

By Mr. Hamborsky:

Q. When we discussed the trial, up in the office before you took the witness stand, you mentioned other claims?

Mr. Goodman: Just a moment.

A. Yes.

Mr. Goodman: I object.

[fol. 191] The Court: Sustain the objection.

Mr. Goodman: To the form of the question, and prompting the witness.

The Court: Sustain the objection.

By Mr. Hamborsky:

Q. Who all was present at this trial?

A. Only Guss Polites and all the Greek members of the Communist Party of the District of Michigan.

Q. And you say this Harry Horasiades?

A. Horasiades.

Q. Was the Chairman of the—

A. (Interposing) Chairman.

Q. (Continuing)—of the trial?

A. Yes.

Q. That is when you were—

A. (Interposing) Expelled.

Q. (Continuing)—kicked out of the Party; is that it?

A. Yes.

Q. Did Guss Polites have any part of the trial?

A. He conducted the meeting. He called the meeting.

Q. Did he talk at the trial?

A. Yes, he talked in the trial against me and against my policies and against me, my attitude towards the Communist Party.

Q. What did he say?

A. He say that Party members that waver between the Bourgoisi and Communist ideology don't belong in the [fols. 192-226] Communist movement.

The Court: I got the bourgeois part of it. What was the other?

A. The Communist ideology.

The Court: Communist ideology?

A. Yes.

The Court: Well, all right. Go ahead. All right.

By Mr. Hamborsky:

Q. Did he say anything else at the meeting?

A. I don't recall.

Mr. Hamborsky: That is all.

The Court: All right.

Mr. Hamborsky: Cross-examine.

[fol. 227] WILLIAM O'DELL NOWELL, a witness called on behalf of the Government, having been first duly sworn by the Court, testified as follows:

Direct examination.

By Mr. Hambrosky:

The Court: Your full name?

A. William O'Dell Nowell.

The Court: William O'Dell Nowell. How do you spell the last name?

A. N-o-w-e-l-l.

The Court: Nowell?

A. Nowell.

The Court: Nowell. N-o-w-e-l-l.

A. That is right.

The Court: All right, Mr. Nowell. Just keep your voice up, please.

By Mr. Hambrosky:

Q. What is your name, witness?

A. Will O'Dell Nowell.

Q. And where do you live?

A. I live at 110 East Hancock Street.

Q. Detroit, Michigan?

A. Detroit, Michigan.

Q. Where were you born?

A. I was born in the State of Georgia.

[fol. 228] Q. When?

A. On July 11th, 1904.

Q. And are you a citizen of the United States?

A. I am.

Q. Where are you presently employed?

A. I am employed by Immigration and Naturalization Service, United States Immigration.

Q. And what do you do?

A. I am a consultant.

Q. How long have you held that position?

A. Well, I have been employed by Immigration since 1948, December, '48. I have been re-classified on two occasions. The present position I have held for approximately two years.

Q. Now, were you ever a member of the Communist Party of the United States?

A. Yes, I was.

Q. When and where did you join?

A. I joined at Detroit, Michigan, in June of 1929.

Q. And how long were you a member of the Communist Party?

A. Up to the end of 1936.

Q. Did you belong to—oh, no; strike that. What branch or branches of the Communist Party did you belong to?

A. Well, originally, that is, the first unit I was assigned to was the shop unit because I was employed in industry, the Ford, unit, Rouge Unit at the Ford plant of the Communist Party.

Q. And how many times did you attend closed meetings of the Communist Party while you were a member?

A. I should say an average of once a week. There were some weeks that I attended more meetings and others less.

I believe an average of once a week throughout my membership would be a good estimate.

Q. Now, I wonder if you would give the court the structure of the Communist Party in America?

The Court: You mean today?

By Mr. Hambrosky:

Q. While you were a member?

The Court: That was when?

Mr. Hambrosky: 1929 through 1936, I believe.

The Court: Remember, what does that law provide? Ten years?

Mr. Hambrosky: Prior to naturalization.

The Court: All right.

A. When I was a member, during the period of my membership in the Communist party, it was a section of the—

By Mr. Hambrosky, interposing:

Q. Wait a minute. Let me say this: I will rephrase the question to read from 1931.

The Court: All right.

By Mr. Hambrosky:

Q. Through 1936.

The Court: All right. Now, the structure of the Communist Party and what it advocated at that time?

[fol. 230] Mr. Hamborsky: I am not up to that question yet. I will ask just the structure.

The Court: What do you mean, now? What have you got? Just the structure?

Mr. Hamborsky: Yes.

The Court: All right.

A. During the period of my membership—

By Mr. Hamborsky, interposing:

Q. Speak up so the Judge can hear you.

A. Yes.

The Court: I can't hear at all, now.

A. I will turn around. Well, during the period of my membership in the Communist Party of the United States

it was a section of the Communist International. The highest permanent body, that is, policy making body of the Communist Party of the United States was the Central Committee. The highest authority was the National Convention, which elected the Central Committee.

The Court: How many on the Central Committee?

A. Approximately twenty-five. It may vary, but I believe, my recollection of that, it was twenty-five.

The Court: All right.

A. The National—the highest authority was the Central Committee. The Highest officer in the Party was the National Secretary. There was a sub-committee of the Central [fol. 231] Committee called the Political Bureau. Around the Central Committee there were various Commissions, the Language Bureaus covering the various nationalities that were organized in the Communist Party, the national—and they were heads of National Fractions. And then there was the Organization Department, Woman's Department, National Negro Commission, similar committees and commissions as the nationality commission.

The American section of the Communist Party was in turn divided into Districts. The highest policy making body of these Districts, various Districts, was the District Bureau, and the highest officer was the District Organizer or District Secretary. The convention, District Convention was the highest authority; the Bureau the highest authority between conventions.

The Districts maintained a replica of the Central Committee structure, with the various commissions covering all of the various nationalities and other problems, trade unions, and so forth.

The Districts were in turn divided into Sections. The highest authority in the Section was the Section Committee. The highest office was Section Organizer. The highest authority was the Section Convention; the Bureau the highest authority between conventions, that is the Section Committee Bureau.

[fol. 232] The Sections were in turn divided into Units, the highest officer being the Unit Secretary or Unit Organizer, and the highest policy making body the Unit Bureau.

In turn, the National Fractions were—the National Fractions comprising all of a particular nationality or group

that is organized under the National Bureau, these are anchored to the various Districts in which the particular group that we're under the direction of the National Fraction happens to be. Therefore, there were Fractions that were attached to Section Committees, and, depending upon the importance, attached directly to the District Bureau or District Committee.

Now, roughly, this was the structure of the Communist Party of the United States during the period of my membership.

By Mr. Hamborsky:

Q. All right. Let me ask you, did you attend any Communist schools?

A. Yes, I did.

Q. In the United States?

A. Yes, I did.

Q. When and where did you attend?

A. I attended the District School and the Detroit—in Detroit in 1930.

Q. And what subjects were you taught in the school?

A. We were taught—

[fol. 233] Mr. Goodman: (Interposing) Well, just a moment. This is going behind the period in which the defendant was a member. I don't see how it would be applicable as far as he is concerned.

The Court: I quite agree with you, although probably I could assume that unless it was changed that it is the same policy that was advocated or taught afterwards. But you will have to get beyond 1930 here.

Mr. Hamborsky: Well, your Honor, we are laying the foundation here for testimony of an expert witness, and I believe that his testimony as to the way he developed his activity will come clearly within the ten-year period, even though this particular point—

The Court: (Interposing) You mean even where he went to school?

Mr. Hamborsky: Yes.

The Court: All right. That isn't showing yet—that is showing where he got his background, but, of course, you will have to connect it up after '31.

Mr. Hamborsky: Right.

The Court: You understand that. All right.

Mr. Hamborsky: Yes, sir.

By Mr. Hamborsky:

Q. Now, what subjects were you taught in this school in the United States?

A. We were taught Leninism, Marxism Economics, History [fol. 234] tory of the Labor Movement, Trade Unions and Strike Strategy, the Communist Party Policy on the National Question. Then we engaged in certain practical tasks, applying our theoretical training to—in practical work. We made reports on this.

We also studied propaganda, how to agitate propaganda—

The Court: (Interposing) I can't hear the witness at all.

A. We studied agitation propaganda, how to write leaflets and make economic and political analyses, and to make reports, and various things.

By Mr. Hamborsky:

Q. Who were your instructors?

Mr. Goodman: Well—

A. (Interposing) Jack Stachel.

Mr. Goodman: (Continuing) —may I object? We are going to go into the details of what occurred in this school before the defendant was a member? I don't want to—

The Court: (Interposing) I think he can tell where he got his foundation. He can't go into all the details. He can just say where he got his foundation, and then whether or not he carried it on afterwards.

By Mr. Hamborsky:

Q. Well, did you attend any Communist school outside of the United States?

A. Yes, I did.

[fol. 235] Q. When and where?

A. I entered the International Lenin School, Moscow, in September, 1931, and was a student there until December, 1932.

The Court: Who paid your way when you were there?

A. In the school proper?

The Court: Yes?

A. The——

The Court: (Interposing) You had to eat. You had to have clothes.

Mr. Hamborsky: I was going to ask him who sent him there, who sponsored him there.

The Court: You can ask him that, too.

A. Shall I answer that?

The Court: Yes.

A. Well, the Communist International and the Russian Government furnished dormitories, food and instructors, equipment.

The Court: All right. All right.

By Mr. Hamborsky:

Q. Now, what subjects were you taught?

A. The subjects——

Q. (Interposing) Sorry. Hold that a minute. Who sent you to that school?

A. The Central Committee of the Communist Party of the United States.

[fol. 236] Q. And I believe you just testified that they were the ones who paid the bill?

A. They paid our travelling expenses, yes, to Russia.

Q. To Russia. And once you were at the Lenin Institute——

A. (Interposing) Then the Communist International or the Russian Government took care of us.

Q. Now, what subjects were you taught at the Lenin Institute?

A. We were taught——

Mr. Goodman. (Interposing) Your Honor, I want to object to that as unrelated to the defendant in this case and not binding upon him.

The Court: It is a foundation. He has to connect it up later on.

A. I was taught Leninism—Marxism and Leninism; Marxian Economics; The History, the Structure, the Constitution of the Communist International; the History of the Communist Party of the Soviet Union; History of the Labor Movement; Trade Union and Strike Strategy; International Propaganda; and the Science of Civil Warfare.

Also we did certain practical studies on the Structure of the Soviet State, the Role of the Communist Party in the Soviet Union, Soviet Economics, and practically the entire Soviet system.

By Mr. Hamborsky:

Q. Who taught this course in Civil Warfare?

A. These were taught by officers of the Red Army, Russian Army.

[Vol. 237] Q. And what were you taught in this particular course?

Mr. Goodman: I object to that as not related to this defendant.

The Court: Oh, no; I think that this is—no, he may answer.

A. We were taught—continuing, we were taught this as a part of the continuation of our theoretical studies, how to apply these actually in achieving the overthrow of our own governments, that is, in the execution or carrying out of civil war, civil warfare. It was explained, as was explained in our theoretical studies, that Leninism essentially is the science of civil warfare, first the class struggle and the instigation of the class struggle, the analysis of it, and the direction of this through strategy and tactics, theory, and the implementation of theory up to the point of mature—where the conditions are mature for an uprising, and then, of course, the actual military aspects of the class struggle.

The particular subjects were—or things taught, I should say—it was all one subject—dismantling and re-assembling and repair of the arms of the major capitalist countries, that is, Japan, the United States, Germany, France, England. Code, transmission of messages by code, target practice, gas mask drill, guerilla fighting, barricade fighting, the structure of barricades, formal military operations, field operations, field tactics and strategy, the combining of

[fol. 238] guerilla warfare with the form of conventional warfare, agitation and propaganda in the armed forces to break away segments for revolutionary purposes aiming at the overthrow of the—of our own government. We practiced grenade practice, sabotage, sniping—

The Court: (Interposing) Well, am I right—witness, am I right in understanding from what you are saying—now, I don't know—do I understand that in the school you were first taught the necessity of the overthrow of this government by force and violence if you were to obtain the objectives of the Communist Party, and then you were taught how it should be done, the practical way of carrying it out? Is that right, or am I wrong?

A. That is correct, sir.

The Court: All right. You needn't go into any detail any more, unless the District Attorney wants it for—

Mr. Hamborsky: (Interposing) No. That is—

A. (Interposing) That is generally what we were taught in that course.

The Court: Yes. All right.

By Mr. Hamborsky:

Q. Were you taught also at the Lenin Institute the aims and purposes of the Communist Party?

A. We were.

The Court: I thought that is what he has been telling us in the first place.

[fol. 239] Mr. Hamborsky: Well, that is right. You have got it.

By Mr. Hamborsky:

Q. Did—

The Court: (Interposing) Well, all right. You can develop it as to what they were. I don't know.

Mr. Hamborsky: Well, all right.

The Court: I don't know that you have touched on that.

Mr. Hamborsky: Cross that last question out. Strike it.

By Mr. Hamborsky:

Q. Did the Communist Party of the United States relate to these aims and purposes that you have just described and were taught to you in the school?

Mr. Goodman: Just a moment.

The Court: I don't know as he has to know what the aims and purposes are. You can develop that if you want to, so that there is no question that it has been put in, later on, if the circumstances develop. It becomes a question, of course.

By Mr. Hamborsky:

Q. Do you know what the aims and purposes of the Communist Party were?

The Court: Were you taught?

By Mr. Hamborsky:

Q. Were you taught the aims and purposes of the Communist Party?

A. Yes, I was.

[fol. 240] Q. What were you taught?

Mr. Goodman: Well, may I find out when and where that was?

The Court: Where was it you were taught the aims and purposes of the Communist Party?

A. At the Lenin International School, since that seems to be under discussion just now, and also prior I was taught the aims and purposes of the Communist Party in Detroit here.

The Court: All right.

By Mr. Hamborsky:

Q: What were you taught the aims and purposes of the Communist Party were?

Mr. Goodman: Well, I object to that as hearsay and not binding upon this defendant.

The Court: No. He can tell what he was taught they were. He went to the schools. I don't know how it could be hearsay.

Mr. Goodman: As far as this defendant is concerned He wasn't there.

The Court: Well—

Mr. Goodman: (Interposing) He doesn't know.

The Court: I don't know about that. They have got to connect these things up. He certainly can testify. He can testify what he was taught as to what the aims and objectives of the Communist Party were. Otherwise, how are these people going to prove their case?

[fol. 241] Can they make a law and say "You can't prove it. You can't prove your case according to the law," or what?

Mr. Goodman: I think they have to relate the testimony to the defendant. He went to Moscow and a lot of the things he said were taught to him there.

The Court: Well—

Mr. Goodman: (Interposing) You can—

The Court. (Continuing) —let's find out what this man—

Mr. Goodman: (Interposing) This defendant wasn't there and he didn't know about it.

The Court: What the aims and objectives of the Communist Party were. I am going to permit it.

A. I was taught in Moscow, as I had been previously taught at Detroit here in the District Workers School, that the object of the program of the Communist Party of the United States and the Communist International was to overthrow the Government of the United States by force and violence since there was no other way to achieve the objectives of the program of the Comintern, and to establish in its stead the dictatorship of the proletariat fashioned after the Soviet form.

The Court: Well, now, are you talking about the Communist Party of the United States, or of America, or are [fol. 242] you talking about the Communist Party of some foreign country, and are they the same as far as you know?

A. They are the same, your Honor, and I have specific reference to the Communist Party of the United States.

The Court: Of the United States.

A. Because our subjects were nationalized and the program of the Comintern was particularized in such a way—that is, the implementation of it—so that we dealt with our own nationality problems as well as international problems.

The Court: All right. All right.

By Mr. Hamborsky:

Q. As I understand the last answer, Mr. Nowell, that was the relation of the Communist Party of the United States to the Communist International?

A. Yes. The Communist Party of the United States was a section of the Communist International, maintained representation in the Communist International at Moscow, and I dealt with them almost daily during the period I was there. And its resolutions—the decisions—resolutions and decisions of the Executive Committee of the Communist International were regularly sent to the Communist Party of the United States and we received them here in this District prior to my going to Russia, during the time and subsequently, and carried those out, that is, implemented them through putting them into practice as far as possible.

Q. Well, did you receive instructions of a practical nature [fol. 243] as to how to promulgate the aims and purposes of the Communist Party?

A. Yes, I did. Those were some I have already mentioned, as far as civil warfare goes. But in trade union and strike strategy we were taught agitation and propaganda, the more elementary means of creating organizations, organizational forms, the relationship of mass organizations to the Communist Party, the political content, that is, economic and political issues, and certain demands based on our analyses in line with the line of the Comintern by which we would appeal to people to join unions, mass organizations of various sorts, and then to indoctrinate them and lead them step by step to a better understanding of the program of the Comintern until such time as a political crisis was matured.

At that stage we were—we would be prepared, as I was taught, for a general strike, the political strike to convert the general strike into a political uprising and into rebellion and civil war. That is generally the method and some of the tactics, an indication of the agitation and propaganda method, structure and objectives, the immediate objectives leading to a civil war itself.

Q. Now, what was your purpose in going to this school?

Mr. Goodman: I object to that. A self-serving statement.

The Court: Just a moment, please.
[fol. 244] (Short intermission.)

The Court: You may proceed, gentlemen.

Mr. Hamborsky: Mr. Goodman, I think that you made an objection. I will withdraw that last question.

By Mr. Hamborsky:

Q. Witness, what offices have you held in the Communist Party during the time that you were a member?

A. Well, I was—the major offices I held were—the offices were member of the District Bureau, District Secretary, District Secretary of the Commission on Negro Work, Director of the Workers Book Store, District Circulations Manager of the Daily Worker, Director of Agitation and Propaganda for the District—Michigan District, Director of the Workers School, and member of the National Commission or Committee of the Trade Union Unity League which does not come under the Communists proper, but was controlled by them. That is all the major positions I held during the period I was in the Party.

Q. And through the—strike that. When you mentioned the word “District”, that related to this District?

A. Yes. Michigan District. That is the Michigan District.

Q. Now, let's take one of these duties at a time and—mean one of these offices at a time. What were your duties as Director of the Book Store?

A. Well, my duties there were to select appropriate agitation propaganda materials, that is, reading materials according to the Communist program, through consultation with the District Bureau and the Agitation and Propaganda Division both locally and nationally, and to order these materials from International Publishers and distribute them through the Agitation Propaganda Department or to make them available to the units and through the units to the people at large.

That was largely—I kept accounts, made reports to the District Bureau as to sales, and that was my work as Director of the Book Store.

Q. Well, the books that you had under your charge, while you were Director of the Book Store, were they the books that were used in the Workers School?

A. The books that we used in the Workers School, the most of them were kept in the Book Store, because we kept a variety of pamphlets, popular pamphlets for mass distribution on various issues, economic problems, political problems of various sorts.

Q. Well, are you—no, strike that: Had you studied and read these books that you had charge of?

A. I usually read them as they came in. Many of them I had read before, particularly the Theory, History, the Classics. I guess most of your—most of the major works I had read before. Of course, there are always current pamphlets coming out.

[Vol. 246] The Court: Current what?

A. Current pamphlets on current issues. I read those as they came in.

By Mr. Hamborsky:

Q. Well, you are familiar, then, with the literature that was published, circulated or distributed by the Communist Party during those years from October 6th, 1931, through your membership in the Party?

A. Yes, I am.

Q. You are?

A. Yes.

Mr. Hamborsky: Now, your Honor, we have a number of Exhibits here. They are all books. And it is going to be a time-saving operation if I can hand them separately to Mr. Goodman and handle them as one exhibit rather than individually.

The Court: I think you can ask him—if you take up one and ask him if that is one of the books, and then you can get them all together and offer them for admission.

Mr. Hamborsky: All right.

By Mr. Hamborsky:

Q. Can you identify those books—that book or one of like content?

Mr. Goodman: Do you want to mark those as proposed exhibits first?

The Court: Yes. What exhibit is this?

[fol. 247] (Whereupon several books and pamphlets were marked by the Reporter for identification as Government's Exhibits 5-A through 5-N, respectively.)

The Court: All right.

By Mr. Hamborsky:

Q. Witness, I will hand you these proposed Government's Exhibits 5-A through N, and ask you if you can identify Exhibit 5-A?

A. Yes.

Q. And whether you have an independent recollection of its contents?

A. Yes, I do.

Q. Also 5-B, the same question.

A. Yes. I read this and I have a recollection of its contents.

The Court: A little louder, please.

A. Surely. Sorry.

Mr. Hamborsky: Did you take the names of those?

By Mr. Hamborsky:

Q. Will you read the names of Exhibits 5-A and B?

A. 5-A is—the title of this pamphlet is The Struggle Against Imperialist War and the Tasks of the—

The Court: (Interposing) Struggle against what, please?

A. (Continuing)—Imperialist War and the Tasks of the Communists.

The Court: Who is it by?

[fol. 248] A: It is a Resolution of the Sixth World Congress of the Communist International.

The Court: When and where?

A. That was held—my independent recollection is it was held in Moscow in 1928.

The Court: All right.

A. The title of 5-B is The Ultimate Aim—Political Education, International Publishers, published by International Publishers. I have read this pamphlet and it was around 1935 and I recall its contents.

The Court: Is it what?

Mr. Goodman: What is the last part of his testimony?

A. Its contents.

Mr. Hamborsky: "I read this in the latter part of 1935 and I recall its contents."

By Mr. Hamborsky:

Q. I show you Exhibit 5-C and ask you the same question.

A. The title of this pamphlet is State and Revolution by V. I. Lenin, published by——

The Court: (Interposing) By whom?

A. By V. I. Lenin.

The Court: Is that the Lenin that is always referred to?

A. Yes, your Honor. The founder of the Soviet government.

[fol. 249] The Court: Are those the initials? Are those his initials?

A. Yes, sir. Vladimir Ilich Lenin was his full name.

The Court: Somehow or other it threw me off the track.

By Mr. Hamborsky:

Q. Well, do you recall that book?

A. I have read this pamphlet. I used it as a text, to teach from, for teaching.

Q. I show you proposed Exhibit 5-D and ask you if you can identify that?

A. The title of this pamphlet is Program of the Communist International.

Q. Say "Yes", if you can. When I ask the question, can you identify it, say "Yes" and then read it.

A. Yes.

Q. What is your answer?

A. Yes, I can identify this pamphlet.

Q. Okay.

A. It is Program of the Communist International.

Q. I hand you 5-E and ask you if you can identify it.

A. Yes, I can identify this pamphlet. The title of the booklet is Report of the Eighth Convention of the Communist Party by Earl Browder. I have read the pamphlet and am familiar with its contents.

Q. Proposed Exhibit 5-F. Can you identify that one?

[fol. 250] A. Yes, I can. The title of the pamphlet is Why Every Worker Should Join the Communist Party. I have read the pamphlet and am familiar with its contents.

Q. I will show you proposed Exhibit 5-G and ask you the same question.

A. Yes, I am familiar with that pamphlet. The title is Resolutions of the Seventh World Congress of the Communist International, including the closing speech of G. Dimitrov. I have read the pamphlet and am familiar with its contents.

Q. I will show you Exhibit 5-H and ask you if you can identify it.

A. Yes, I can. The title of this pamphlet is The Communist Party, a Manual on Organization, by J. Peters. I have read the pamphlet and used it as a text in the Workers School, and I am familiar with its contents.

Q. I will show you Exhibit 5-I and ask you if you can identify it.

A. Yes, I can. Title of this pamphlet is The Twenty-One Conditions of Admission Into the Communist International by O. Piatnitsky. I studied from this text in the Lenin School on organization of the Communist—Comintern and worked with Piatnitsky himself.

Q. I show you Exhibit 5-J and ask you if you can identify it?

A. Yes, I can. The title of this pamphlet is Why Communism, Plain Talks on Vital Problems, by M. J. Olgin. I [fol. 251] have read this pamphlet. I have used it as a text in Section and Unit classes during 1935 and 1936, and I am familiar with its contents.

The Court: Did you ever teach in a class that Guss Polites was in that you know of?

A. I don't recall the class on theory, attending the subjects. He has attended my lectures, educational lectures.

The Court: That is part—was that part of the curriculum or part of the plan?

A. Well, we had—we gave lectures, popular lectures during periods, say, of the Lenin Memorial, or prior to May Day or something, educational lectures.

The Court: I see. I see.

By Mr. Hamborsky:

Q. I will show you Exhibit 5-K and ask you if you can identify it?

A. Yes, I can. The title of this pamphlet is Left Wing Communism—an Infantile Disorder, by V. I. Lenin, published by International Publishers. I have studied the pamphlet and used it as a text and I am familiar with its contents.

Q. I will show you Government's Exhibit 5-L and ask you if you can identify it.

A. Yes. Yes, I can. The title of the pamphlet is Communist Manifesto by Karl Marx and Frederick Engels. I have studied the pamphlet and I have used it as a text and studied from it. And I am familiar with its contents.

[fol. 252] Q. I will show you 5-M and ask you if you can identify it.

A. Yes. Yes, I can. Part of this pamphlet is Foundations of Leninism by Joseph Stalin, International Publishers, printed by International Publishers in New York. I have studied the pamphlet and taught from it and have used this as a text.

Q. I show you Exhibit 5-N and ask you if you can identify that.

A. Yes, I can. The title of the pamphlet is Problems of Leninism by Joseph Stalin, published by International Publishers. I was taught from this and I in turn used it as a text book in the Workers School. I am familiar with its contents.

Mr. Goodman: And you what?

The Court: "I am familiar with its contents."

Mr. Goodman: Oh.

Mr. Hamborsky: At this time, I would like to offer in behalf of the Government Exhibits 5-A through N.

Mr. Goodman: I object to its on the ground it is not related to the defendant in this case and it has not been identified.

The Court: That can be taken care of in some way. The court will permit it—that is, if it will. I don't know.

By Mr. Hamborsky:

Q. Now, witness, you have identified the Government's Exhibits 5-A through N. Can you state whether or not these books were printed, circulated and distributed by [fol. 253] the Communist Party of the United States during

the period of your and Mr. Polites' membership in the Communist Party?

A. Yes; they were.

Q. And do these books represent the aims and purposes of the Communist Party of the United States during the years 1931 through 1936?

A. They do.

Q. Now, so that this is clear, I asked you at the time you finished the Lenin Institute what the aims and purposes of the Communist Party were. Would you now state the aims and purposes of the Communist Party of the United States of America as contained in these documents?

Mr. Goodman: Just a moment. I want to object to that, as calling for a conclusion in the first place, and unless it is—unless that conclusion is related to the defendant in some way I don't think it is admissible for that reason. There are two grounds to the objection.

The Court: The evidence so far is that the defendant was a member of the Party at that time, and a very active participant, and who received all this literature and taught people, got them into the organization, said he was acquainted with it, and only quit in 1938 because he changed his views but because he was ordered to quit because of a [fol. 254] change in their policy of some kind. Wasn't that it?

Mr. Goodman: Relating to—

Mr. Hamborsky: (Interposing) Yes.

Mr. Goodman: (Continuing) —the non-acceptance of aliens.

The Court: Yes.

Mr. Goodman: As members of the Communist Party.

The Court: Yes.

Mr. Goodman: But there is no testimony that the defendant ever taught these books.

The Court: He said he got all the literature and distributed it.

Mr. Goodman: Well, he said he got literature. He didn't identify it.

The Court: Well—

Mr. Goodman: (Interposing) Or relate it to the defendant.

The Court: At least, the court will take it for what it is worth, and I think it is proper. Objection overruled.

Mr. Hamborsky: Would you re-read that last question.

(Last question read by the Reporter.)

A. The aims and purposes—aims and purposes of the Communist Party of the United States, are as set forth in [fol 255] the basic classics from which the policy of the Communist Party was taken during the period of my membership after leaving the Lenin School.

I take State and Revolution as basic. That was a basic classic.

Firstly, it analyzes the capitalist state as the executive committee of the capitalist class as an instrument of oppression in the service of capitalism against the working class, and arrives at the conclusion that this government must be overthrown, and the only way to do it is by force and violence.

That, in its stead, there shall be established the dictatorship of the proletariat. That this dictatorship, which will consist of the working class and its allies, shall be organized into a Soviet form of government as you have in Russia today.

Also, one of the important elements in order to keep the Party ideology pure or on the right track, as they assumed it was on the right track then, was the fight against reformism. In State and Revolution, and the pamphlets based on it, Why Communism, and there is a popular version of much that is contained in the program of the Comintern, reformism, that is, gradualism, is wholly rejected. Reformism, as a method, much less an end or a means of achieving the final objective of the Communist Party, was rejected. [fol. 256] And in its stead, the violent overthrow of the government was substituted, as contained in most of these pamphlets. I believe almost every one proposes that thesis, that program, and that object or strategy.

By Mr. Hamborsky:

Q. Now, what were some of the other duties that you had in regards to the more—well, the higher positions that you held in the Party? Now, you have gone through your Directorship of the Book Store. I believe you also testified

that you were a teacher in the Workers School, or an instructor in the School.

A. Yes.

Q. What were your duties in regards to that?

A. Well, I was director of the School, and worked with the—was politically responsible for it, worked out the curriculum in consultation, of course, with the District Bureau and the National Educational Commission. I taught the basic classics. I supervised or selected instructors to teach in accordance with the curriculum. As I said, it was worked out in consultation with the Bureau and the National Educational Commission, then called the Agitation and Propaganda Commission.

I aided, meantime, the Organizational Secretary in selecting people who had certain abilities to be trained for Communist Party leadership and in placing these in strategic positions that suited their abilities in order to advance the [fol. 257] movement organizationally, politically, and ideologically.

Also, in the forum lectures sometimes current local issues were discussed. As a rule, I led those discussions. The instructor participated as well as the student body and even outside members of organizations controlled by the Party were invited to participate.

And then, in general, we directed the ideological, political, and theoretical training of the Party—

Q. (Interposing) While—

A. (Continuing) —and leadership for Party work, as Director of Education.

Q. Now, do you know Guss Polites, the defendant here?

A. Yes, I do.

The Court: Now, I think you are going to get on another subject. It is after 1:00 o'clock, and we are not going to finish with this witness, anyway.

Mr. Hamborsky: We are not—I mean, I won't have more than ten minutes of questioning.

The Court: I know. But that is a quarter after, and then he starts in, and then he will have at least ten minutes or twenty minutes or half an hour. He ought to have. You have had him for an hour and he ought to have him at least half an hour.

Why, certainly. We will adjourn court until tomorrow [fol. 258] morning at the usual hour, 9:00 o'clock.

Mr. Hamborsky: Judge, Leo Syrakis will not have to come back as far as we are concerned. Will he have to in behalf of the defendant?

Mr. Goodman: I want to check one thing this afternoon, and then I will call you and inform you whether we need him tomorrow morning or not.

The Court: All right.

Mr. Hamborsky: All right.

(Whereupon the hearing in this cause was adjourned to Wednesday, July 22, 1953, at 9:00 o'clock A. M.)

[fol. 259]

Detroit, Michigan.

Wednesday, July 22, 1953.

9:00 o'clock A. M.

Court met pursuant to adjournment.

Parties present same as before.

The Court: All right. You may proceed.

WILLIAM O'DELL NOWELL, a witness called on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows: . . .

Direct examination. (Continued)

By Mr. Hamborsky:

Q. Witness, so that we can clear up some of the testimony that was given on the structure of the Communist Party, I wonder if you would tell the court what a Fraction of the Communist Party is.

A. A fraction is a group of members of the Communist Party working within a non-Communist organization to carry out the policies of the Communist Party. They may be recruited from among the members of that organization or they may be sent in to that organization.

[fol. 260] The Court: Infiltration?

A. Infiltration. They don't act openly as an organized group.

The Court: All right.

A. It is a conspiracy of certain members of the Communist Party operating within a non-Communist organization.

By Mr. Hamborsky:

Q. But every member of the Fraction is a member of the Communist Party; is that correct?

A. That is correct. They must be.

Q. All right. Now, Mr. Nowell—now, there is one other thing. These members of the Fraction do not pay dues, a Fraction, is that correct?

A. No; they don't.

Q. So that, basically, every Fraction member is also a member of some unit?

A. Yes.

— Mr. Goodman: I just suggest to counsel that he don't lead the witness.

The Court: Let the witness testify.

Mr. Goodman: Pardon. I wanted to object to the extremely leading form of the questions.

The Court: That is what I say. You should let the witness testify. Do you object?

Mr. Goodman: I do; yes.

The Court: All right. The point is well taken.

By Mr. Hamborsky:

Q. Would you explain the relationship of dues as to [fol. 261] the Fraction?

A. A member of the Communist Party Fraction must firstly be a member of the Communist Party proper, that is, its legitimate structure, within its legitimate structure. By that, I mean either a shop unit or a street unit. A fraction is a segment operating, as I have described before. They do not pay dues to the Fraction Secretary. They pay dues to their unit Financial Secretary, because the Fraction is not operating as an organized group, legally, within the organization in which they are operating, and, therefore, they are a segment attached to the Party organization carrying out a special mission within a non-Party organization, and yet

they are a legitimate part of the Communist Party structure.

Mr. Goodman: What is the last?

(Last portion of answer read by the Reporter.)

By Mr. Hamborsky:

Q. Now, do you know the defendant, Guss Polites?

A. Yes; I do.

Q. Do you see him in the court room today?

A. Yes; he is sitting to the right of counsel for the respondent.

Mr. Hamborsky: Let the record show that the witness identified the defendant.

By Mr. Hamborsky:

Q. Did you ever attend any closed meetings of the Communist Party with the defendant?

[fol. 262] A. Yes, I have.

Q. Where?

A. At the Greek Workers Club.

The Court: The what?

A. Greek Workers Club.

The Court: Oh, yes.

A. At Brush and Monroe. I think it is Monroe that crosses there. And at the old Greek Workers Club, which was later abandoned, but sometimes meetings were held there, always rented the upstairs. And at Gratiot near Broadway. And then at Section Headquarters on, somewhere, or near Chene below Vernor Highway, after they became a Section, Section 6. Prior to 1934, it was not a Section; it was simply a unit consisting largely of the Greek Fraction. And at Ferry Hall, Finnish Hall, Thirteenth and McGraw, and several other places throughout the city.

Q. Now, when did you attend these meetings with Mr. Polites?

A. Between 1931 and 1936.

Q. Do you know of your own knowledge what positions the defendant, Guss Polites, held in the Communist Party during that period of time?

A. Not all of the positions. I do know that he was a member of the Fraction Bureau of the Greek Fraction, and my recollection is that he was Secretary of that Fraction for a time. At least, he was a high functionary and attended [fol. 263] functionary meetings.

Q. Now, were most of these closed meetings that you attended with Mr. Polites functionary meetings?

A. Some of them were. I would not necessarily say most of them were.

The Court: When did he say he did this?

Mr. Hamborsky: From '31 through '36.

The Court: All right. All right.

By Mr. Hamborsky:

Q. Now, do you know of your own knowledge of Mr. Polites' activities with the Food Workers Union?

A. Yes, I do.

Q. Would you explain to the court what that was?

Mr. Goodman: May we have the date, please?

A. Well, it was again in 1933. You see, originally, I should like to explain my answer—we had independent—that is, the Communist Party maintained independent food workers groups. It was not a chartered union. Those groups were organized by the Communist Party. They existed in various parts of the country. Because, for the purpose of bargaining and to have a parent organization, the Communist Party Fraction in the food workers was instructed to increase its organizational activities among the hotel and restaurant workers, and eventually, if possible, to affiliate with the American Federation of Labor, but be sure that the Local was under control of the Communist Party.

[fol. 264] Now, whether that affiliation was ever consummated or not, I don't know, but those were the instructions given to Chris Korades, Polites and several others of the Greek Fraction Bureau in 1933 and '34. Polites was an organizer of the food workers during that period.

Q. Well, then, you are testifying that he was given instructions by the Communist Party?

A. Yes. By the District Organizer and District Secretariat.

Q. Now, were you ever present at a meeting with the defendant Guss Polites when he spoke as a functionary of the Communist Party?

A. Yes, I have been.

Q. Where and when?

A. It was at the Greek Workers Club on several occasions during 1933 and '34.

Q. What did he say?

A. Well, I was representative from the District Bureau, and the subject largely was that of Marxism-Leninism theory, that is, to spur on our educational program. Also local issues were taken up and the application of Leninism to the concrete situation. My best recollection is that Polites took the floor and spoke as to the objectives of the program of the Communist Party, mentioning local campaigns and their progress at the time.

Mr. Goodman: I can't hear this witness.
[fol. 265] The Court: Mentioning what?

A. Local campaigns that were in progress at the time. Among other things, in detail—

By Mr. Hamborsky, interposing:

Q. Speak up.

The Court: Keep your voice up, please. Does that advocate the overthrow of this government by force and violence?

Mr. Goodman: Did he?

A. He has, in speeches, advocated the overthrow of the government by force and violence, during my presence.

Mr. Goodman: Yes.

The Court: I didn't hear what he said.

Mr. Goodman: I didn't hear the last part, either.

The Court: He says he has advocated—

Mr. Goodman. (Interposing) Read the last answer, please.

(Last answer read by the Reporter.)

A. Better "during"—"in my presence". Also continuing my answer along this line, I, as Educational Director, was charged with evaluating the political and ideological development of Communist Party members, to select and train them in the ideology and political policies of the Com-

munist Party, and on many occasions I have talked in groups and privately with Polites with respect to his political beliefs, his adherence to the line and program and ultimate objectives of the Communist Party and Communist International, and he was always fully in support and an advocate of the firm objectives of the Communist Party of the United States.

By Mr. Hamborsky:

Q. Now, do you know if any time during this period the defendant, Guss Polites, was the director for Agitation and Propaganda?

A. I am not so sure. I am not sure I know he was. I believe he was during the latter part of 1934 or first part of 1935. He was some functionary in his unit. I can't be sure just what it was.

Q. Well, when you stated you were Educational Director, was that for the District?

A. Yes. That was for the District.

Q. And your contacts with Mr. Polites were what? In what capacity did Mr. Polites act when you attended these closed meetings with him?

A. Well, in closed meetings of the Fraction he ordinarily presided, took the presidium, and ran the meeting itself, managed the meeting. At the functionary meetings, of course, all the District Functionaries were there, and he was there as a representative of the Greek Bureau.

Mr. Goodman: May it please your Honor, I just can't hear the latter part of what he says.

The Court: I will tell you, you can speak louder than [fol. 267] that. If you want me to, I will put down the windows.

A. I will try to—

The Court: (Interposing) And shut off the fans and lock the doors or close the doors so that there won't be any noise in here, and then we will all suffer together.

Mr. Goodman: You see, there is the general noise coming right to me in this direction.

The Court: I know. I know. He talks low; there is no question.

All right. Go ahead.

A. I will continue.

The Court: Keep your voice up. You talk all right for a few minutes or a few seconds and then drop it down and you lose the trend while trying to pick up something that you dropped down.

It reminds me of an old politician here years ago who would come back from Congress and give a speech up in my District and give so many figures that while you are trying to put those figures together you forgot to listen and he threw in something else. He used to get away with some dandies, I tell you. Nobody could check up on him.

A. I am soft spoken.

The Court: All right.

[fol. 268] A. At the regular functionary meetings, of course, the District Organizer presided, and the functionary—the functionaries made their reports through the fraction or the unit or whatever was at issue or whatever they were carrying on, the Daily Worker campaign, or demonstrations, or fund raising campaigns or recruiting campaigns or whatever it was. They made reports on what the particular unit or organization in which they were working had done.

By Mr. Hamborsky:

Q. Now, where were these functionary meetings held?

A. Sometimes at Ferry Hall in 1931 and—I was away the latter part of 1931 and '32. In '33 and then after 1933 the most—they were held mostly at Finnish Hall, but sometimes at Ferry Hall and other Halls. Magnolia, Yeamans Hall in Hamtramck, and other places where the Party usually met, or some of its mass organizations.

Q. Were you ever present with Mr. Polites at one of these closed meetings when anyone else besides Mr. Polites advocated the overthrow of the existing government by force and violence?

A. Well, I recall on some occasions, there were two or three of them during 1933 and 1934, that Chris Korades and Chris Nichols (?), George Pappas and several others were present, whose names I do not recall just now, and the Section Organizer delegated to lay the groundwork for the Section was a fellow by the name of Ziegler. Ziegler was [fol. 269] also present at meetings were held in English,

held for the convenience of the District Bureau representative.

Q. What was said by these men?

A. Well, I don't recall what all of the speakers said. They spoke, as I recall, on the subject raised by me as the District Reporter, on Marxism-Leninism, Party ideology, the application of Leninism to the current campaigns of the Party, and the speeches largely depended upon what the particular campaign being waged was at the time.

The Court: Well, witness, it is possible, is it not, that a speaker might talk on Leninism and Marxism, and not advocate the overthrow of the government? That is, there are some features of their ideology that are not necessarily revolutionary; isn't that true?

A. That is true, your Honor. There are possibly—

The Court: (Interposing) There is no objection if a man goes out to advocate or talk about some teaching of Marxism, or Karl Marx and Lenin; that would not classify him as being one in favor of the overthrow of our government.

A. That is quite possible.

The Court: Well, you see, we are interested, or the court is interested in these matters that he advocated that were contrary to—or in favor of the overthrow of this government by force and violence. Not in a general way to be [fol. 270] that he advocated Marxism or Leninism. Do I make myself clear on that?

A. I understand.

The Court: All right.

A. In the ideology and political training, that is, in the theory and ideology and policies of the Communist Party—

By Mr. Hamborsky, interposing:

Q. Talk up, please.

A. Yes, I am. (Continuing)—it was necessary to show, for me, as being responsible for this phase of development, the relationship between reform and the ultimate objectives of the Communist Party. Of course, the Communist Party advocated partial demands and reforms. These fell within the framework of political democracy, the policies of political democracies. However, these were riders—

The Court: (Interposing) These were what?

A. Riders. Riders. R-i-d-e-r-s. (Continuing—leading towards the ultimate objective and were inseparable from it. It was mandatory that the Party functionary accept the total program of the Communist Party, including the overthrow of government by force and violence.

It was not always expected of a new member, who had not been trained in Party theory and ideology and political policies, but not the functionary. He must accept the whole program or be disciplined and expelled. That was my purpose in visiting these units and fractions, to present the [fol. 271] total program.

Q. Now, have you ever seen Mr. Polites at the Communist Party headquarters here in Detroit?

A. Yes; I have.

Q. And where were they located during that period of time when Mr. Polites was a member of the Party?

A. At Grand River and Vernor Highway.

The Court: Grand River and Vernor Highway.

A. Grand River and Vernor Highway. That is just across from Cass Tech.

The Court: All right. Kind of a triangle, about five streets come in there.

A. Just across—

The Court: (Interposing) One, two, three, from five different directions.

A. It is a five-point.

The Court: All right.

By Mr. Hamborsky:

Q. Was that the location of the headquarters during all of that period of time?

A. From 1931 through 1933. It was part of 1934.

Q. And how many times did you see Mr. Polites at the headquarters?

A. Oh, on numerous occasions. I can't recall specifically. I do recall several meetings that the District Organizer held with members of the Greek Fraction, on matters pertaining [fol. 272] to the Club and to the work among the Greek organization generally, and of the Food Workers Union.

Q. Now, these times that you saw Mr. Polites at the headquarters, were those occasions of closed Party meetings?

A. Yes; they were closed.

Q. Now, during the time that you were—you held the position or positions that you did in the Party, did you ever give instructions to Mr. Polites when he was a functionary member?

A. Yes, I have.

Q. What were those instructions?

A. A part of the instructions—

Mr. Goodman: (Interposing) May we have the time and place, please?

A. This was in 1933, the first of 1934. I don't remember the exact month or day. Polites, Korades, and some other members of the Bureau, discussed with myself, John Schmies, and Earl Reno, also William Brown, work in the Food Workers Union, and generally some problems of the Greek organization, the Club there. This was a meeting with the District Secretariat. There were several of such meetings held. As I recall, there was some sort of a factional situation going on that the District Bureau had to resolve and straighten out.

Q. During this period of time, did Mr. Polites report on [fol. 273] his activities back to you?

A. Not to me personally. He reported to the District Organizer and the District Secretary, and at times he reported to—he has been called into the District Bureau to give his report on the Fraction, he and other members of the Bureau, to report on the Party work among the Greek organizations and the Food Workers Union.

The Court: How do you spell that "bureau"?

A. Well, the spelling, the phonetic spelling used mostly now is b-u-r-o.

The Court: I know. But what is the real word you are saying?

A. The b-u-r-e-a-u would be proper.

The Court: Do you usually use the word "Buro" all the time?

A. Well, we did call it "Buro."

The Court: The people in the Greek organization refer to it as "Buro" giving it sort of a French pronunciation?

A. No, sir.

The Court: Or was that just you yourself?

A. I think possibly it is my pronunciation.

The Court: All right. That is all right. I just wondered why. I think you are not the only one. I think others have said that, haven't they?

[fol. 274] Mr. Hamborsky: Yes, sir.

The Court: I may be just a little bit behind the times.

By Mr. Hamborsky:

Q. Now, Mr. Nowell, you, at different times, when Exhibits 5-A through N were presented to you, stated that you used those as lecture material when you were the Director of the Workers School. Is that correct?

A. That is correct.

Q. And do you recall any time when you were the Director of the Workers School, that Mr. Polites was present and attended any of your classes or lectures?

A. I don't recall his having attended a regular class over a long duration. He has attended lectures that I gave, a series of lectures on Leninism.

Q. Did you, as the Director of the Workers School, teach anything besides theory?

A. Yes, I taught practical organizational problems.

Q. And was Mr. Polites ever at any of those lectures?

A. I don't recall specifically that he was. However, in the discussion of theory, I never, nor did other Party speakers ever limit themselves to mere theory. We usually explained the organizational structure, current policies and the application of theory to the objective situation which varies with time and from time to time, depending upon what the objective situation was at the time.

[fol. 275] For instance, the problem of organizing trade unions, or unions—

Mr. Goodman: (Interposing) Give me that last part.

A. I said, for instance, the problem of organizing unions, or the unemployment movement, or a hunger strike, or a campaign for a social question, the policies and the general theory of the Communist Party, in fact, went right down to these local and current immediate problems.

Therefore, we also taught organizational problems, political and economic content of those problems—we talked about them, I should rather say.

By Mr. Hamborsky:

Q. Now, were you in court last Thursday when Mr. Polites mentioned the Unemployment Council?

A. I believe I was.

Q. Would you explain to the court what the Unemployment Council was during that period of time when you and Mr. Polites were members of the Communist Party?

A. The Unemployment Council—Councils, was an organization, a national organization, organized by the Communist Party on instructions from the Central Committee to organize the unemployed. Its purpose was—if this is in line with the question you asked—to prepare these people politically and organizationally so that when they returned to the plants in which they worked, or the jobs, wherever—[fol. 276] whatever and wherever those jobs were, that they would be already be indoctrinated in the Communist Party, and thereby we would have a foothold in that establishment. The demands and the procedure of interesting them was, of course, relief, unemployment and social insurance, cheaper rents, and various demands that would naturally appeal, because it was during the depression and there were quite a number of people unemployed.

They were linked with the whole program of the Trade Union Unity League, a trade union organization sponsored by the Communist Party and were designed to—were designed to build mutually each other.

Q. Now, Mr. Nowell, during the time that you were a member of the Communist Party, were you taught the relationship between the Communist International and the Communist Party of the United States?

The Court: I beg pardon? Give me that question again.

(Last question read by the Reporter.)

A. I was so taught.

By Mr. Hamborsky:

Q. And what were you taught was the relationship?

A. I was taught that the Communist Party of the United States was a section of the Communist International and was bound by the decisions of the Communist International. [fol. 277] The Court: For the same objectives?

A. With the same objectives set forth in the Program of the Communist International.

By Mr. Hamborsky:

Q. Now, did the Communist Party of the United States, if you know, of your own knowledge, maintain representatives in the Communist International?

A. Yes, it did.

The Court: Let's find out where that was, so that we—

By Mr. Hamborsky, interposing:

Q. Where was the office or headquarters of the Communist International?

The Court: Where was it at that time?

By Mr. Hamborsky:

Q. Or where was it during the time that you were a member of the Party?

A. I have forgotten the name of the street, but it was in Moscow, just across the canal from the Kremlin, across from Red Square, across the canal, Moscow, Russia.

Q. Now, do you know who the representatives were from the Communist Party of the United States to the Communist International? During that period of time?

A. In 1931 and 1932 the representative was Clarence Hathaway. He was succeeded in 1934 by Robert Minor, after they got in some political trouble, and Minor didn't do much better, so they sent for a J. Peters, Peters, who was recently—who recently voluntarily left the country, in [fol. 278] touch with the underground here.

Mr. Goodman: Just a moment. I don't think that last part is responsive. I don't think it is material. I ask it be stricken.

The Court: He is the only one who can object to the—

Mr. Goodman. (Interposing) Well, I ask—

The Court: (Continuing)—answer as not being responsive. Not you.

Mr. Goodman: Well, I didn't have a chance to object to it.

The Court: What is that?

Mr. Goodman: Not knowing what the witness would say in the answer, I move that the last part of his answer be

stricken on the ground it is immaterial and apparently based upon hearsay.

☞ The Court: Give me the full answer there. Again, he dropped his voice.

Mr. Goodman: About the fact that Peters—

The Court: (Interposing) Give me the full answer

(Last answer read by the Reporter.)

The Court: What is the question?

(Last question read by the Reporter.)

The Court: That last part was immaterial, the "under-
[fol. 279] ground" part.

A. Now, I should say, your Honor, that I didn't finish my answer.☞

The Court: All right.

By Mr. Hamborsky:

Q. Speak up, Mr. Nowell.

A. Yes; I will.

Other representatives were George Padmore, P-a-d-m-o-r-e, who was representative from the Trade Union Unity League of the United States to the Red International of Labor Unions, the Profintern, in Moscow. That is P-r-o-f-i-n-t-e-r-n. Also Andrew Overgaard, O-v-e-r-g-a-a-r-d was a representative of the Trade Union Unity League of the Communist Party to the Red International Labor Union. Another representative was Otto Yassowood, Y-a-s-s-e-w-o-o-d. Another was Amy Schechter, S-c-h-e-c-h-t-e-r, who was head of the Profintern Commission until that Commission was combined with the Far Eastern Commission.

Those were the top representatives from the American Communist Party to the Communist International during 1931 and 1932 when I was present, when I was in Moscow.

Q. Now, when you stated that they called J. Peters, what did you mean by that?

A. The Communist International sent for Peters to come to Moscow.

[fol. 280] Q. Now, did the Communist International, during this period of time, have representatives in the United States?

A. They did. When I left, at least, I met the Comintern representative in 1930, and I assume, by way of explanation, that he was still representative. His name was—his alias, at least, was Williams.

The Court: Who is that?

A. Williams.

The Court: All right.

A. I subsequently met this man in—I met him first at the Seventh National Convention of the Communist Party in New York in 1930. I subsequently met him in the Comintern in 1932 as Serge Mikalov.

The Court: As what?

A. Serge Mikalov. Mikalov or Mikalov. He was on a Commission with me to draw up a resolution the Communist Party of the United States and was representing Stalin on that Commission, as the Political Secretary to the Communist International.

Mr. Hamborsky: That is all of the Government. You may cross examine.

[fol. 28] IN THE UNITED STATES DISTRICT COURT

OPINION—Filed August 13, 1953

This is a suit brought by the United States of America to revoke and set aside the order granting American citizenship to defendant Guss Polites the 6th day of April, 1942, pursuant to Sec. 338(a) Nationality Act of 1940, 54 Stats. 1158 (Sec. 738(a), USC Title 8).

The action is based generally on the sworn petition defendant Polites filed October 6th, 1941, under Sec. 540(b), Nationality Act of 1940, (54 Stats. 1144(b), that:

(1) He was not and had not been for the period of at least ten years immediately preceding date thereof "an anarchist; nor a believer in unlawful damage, injury or destruction of property, or sabotage; nor a disbeliever in or opposed to organized government"; and

(2) He was * * * attached to the principles of the Constitution of the United States and well disposed

to the good order and happiness of the United States":
(Sec. 307(a) (3) Nationality Act of 1940.)

Narrowed down, however, three grounds are advanced:

(1) That the naturalization was illegal because defendant in his petition stated that he was not, and had not been for at least ten years immediately preceding his filing said petition, member of any organization that "advises, advocates or teaches the overthrow by force or violence of the government of the United States" (Sec. 305 Natl. Act of 1940, 54 Stats. 1141).

(2) That citizenship was gained by fraud in that said defendant denied that he had ever been a member of any organization advising, advocating or teaching overthrow of the government of the United States by force or violence, knowing that the Communist Party of the U. S. to which he belonged from 1933 to 1941 did so advise, advocate or teach: and

[fol. 282] (3) That he committed fraud when he took the oath of allegiance (Sec. 335(a) Natl. Act of 1940, 54 Stats. 1157.

As to Illegality

For the government to succeed in this primary charge, it must prove, first, that defendant, within ten years immediately preceding the day he filed his application for citizenship, was or had been a member of a party that advised, advocated or taught overthrow of this government by force or violence. The Communist Party of the U. S. is not mentioned in the law by name but defendant admits that he became a member of that organization in 1931, continued as such until 1938, when he resigned, after being instructed by its "higher ups" that it was better for attainment of the party's objectives that aliens become less voluble and less conspicuous.

It then only becomes necessary for plaintiff to prove that the Communist Party of the U.S., at the time plaintiff was a member, did advise, advocate or teach overthrow of this government by force or violence. It is not necessary to prove that defendant had knowledge of the objectives of the Communist Party of the U.S. If he was a member of that party, within the statutory ten year period, which he

admits, and it develops that such organization was then advising, advocacy or teaching forcible or violent overthrow of this government; he was not then eligible for citizenship, the prohibition being jurisdictional.

To prove this, plaintiff introduced much evidence that was "clear, unequivocal and convincing" (Schnederman [fol. 283] vs. U. S. 329, U. S. 118, 125; Knauer vs. U. S. 328 U. S. 654).

William Nowell, member of the Communist Party of the U. S. from 1929-1936, testified in part:

(a) That in the years 1931 and 1932, as a representative of the Communist Party of the U. S., he attended the Lennin Institute at Moscow, operated by the Communist International and Russian Communist Parties, which taught that the Communist Party of the U. S. was a division of Communist International, and that both organizations advised, advocated and taught overthrow of our government by force or violence:

(b) That he, Nowell, during the 1930's was District Director of Education for the Communist Party of the U. S. and as such was supervisor of the Workers' School in Detroit, where he taught that one of the aims and objectives of the Communist Party of the U. S. was violent overthrow of the United States Government:

(c) That he, Nowell, during the 1930's, was Director of the Communist Party of the U. S. book store, where he supervised distribution of Communist literature including certain textbooks of the Workers' School, published, distributed and circulated by the Communist Party of the U. S. which literature advised, advocated and taught overthrow of this government by force and violence as one of the objectives of that party: and

(d) That these books prove beyond question that the violent overthrow of this government was advised, advocated and taught by Communist International and Communist Party of the U. S. between the years 1931 and 1938.

Paul Crouch, member of the Communist Party of the U. S. from 1925-1942, who has made a thorough study of

the aims and objectives of the Communist Party of the U. S. and at various times has held prominent positions in the Communist Party of the U. S., also testified in part:

[fol. 284] (a) That during the 1930's, he, Crouch, delivered lectures at official Communist schools in America in which he taught the aims of the Communist Party of the U. S., including violent overthrow of the government of the United States, and the tactics for carrying out said objectives; and.

(b) That during the same period, he Crouch, contributed material to certain books published, distributed and circulated by the Communist Party of the U. S. and wrote many articles for the Daily Worker, which literature advised, advocated and taught violent and forcible overthrow of this government.

In addition to that testimony, the government introduced books, periodicals, magazine articles, etc., available literature of the Communist Party of the U. S. for distribution between the years 1931 and 1938. A few extracts will suffice:

"The replacement of one social system by another, that is the replacing of the rule of one class by the rule of another, is only achieved by means of the violent overthrow of the ruling class, by means of *revolution*. It is impossible for the working class to come to power in any other way than by the method of revolutionary overthrow of the rule of the bourgeoisie, *by the method of proletarian revolution*." (Underlined words in italics in text). (The Ultimate Aim, p. 8).

"The overthrow of capitalism is impossible without force, without armed uprising and proletarian wars against the bourgeoisie." (The Struggle Against Imperialist War and the Tasks of the Communists, p. 10).

"As the leader and organizer of the proletariat, the Communist Party of the U.S.A. leads the working class in the fight for the revolutionary overthrow of capitalism, for the establishment of the dictatorship of the proletariat, for the establishment of a Socialist.

Soviet Republic in the United States * * * * (The Communist Party—A Manual on Organization by J. Peters, p. 8).

[fol. 285] "Can such a radical transformation of the old bourgeois system of society be achieved without a violent revolution, without the dictatorship of the proletariat? Obviously not." (Joseph Stalin's Problems of Leninism, pp. 19-20.)

"The dictatorship of the proletariat is the rule—unrestricted by law and based on force * * * * (Joseph Stalin's Foundations of Leninism, p. 53).

"The Communists disdain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions." (The Communist Manifesto, p. 44).

"It follows that revolution requires, firstly, that a majority of the workers (or at least a majority of the class-conscious, thinking and politically active workers) should fully understand that revolution is necessary and be ready to sacrifice their lives for it." (Lenin's Left Wing Communism, p. 66).

"Armed workers and soldiers and marines seize the principal governmental offices, invade the residences of the President and his Cabinet members, arrest them, declare the old régime abolished, establish their own power, the power of the workers and farmers." (Why Communism by M. J. Olgin, p. 76).

"The necessity of systematically fostering among the masses *this* and just this point of view about violent revolution lies at the root of the *whole* of Marx's and Engel's teaching." (Underlined words in italics in text). (State and Revolution by V. I. Lenin, p. 20).

After the above evidence was introduced, defendant made no denial but contents himself now, through counsel, with questioning the reliability of testimony given by men who were formerly Communists. Our answer to that is, "Where better can the government go but to those who have previously participated in the disloyalty?" Reference is also [fol. 286] made in defendant's brief to an attack on the Republican Party back in the 1850's—in which dire things

were prophesied as a result of its genesis. But these newspapers were giving their own prognostications of what would happen—not the credo of the Republican Party.

Defendant's counsel also seeks to impress the court with the fact that we should look to the entire context of any of the literature introduced—not extracts. That is true, but it is also significant to this court that out of all the above extracts only one is claimed to be in the least at variance with the context.

Res Judicata

The issue of res judicata has been raised as a bar to any further examination to determine the political affiliations of defendant or his adherence to the Communist Party of the U. S. at the time of his petition. This defense may be available in some denaturalization cases; but not here. Its application is confined to instances where both parties have had their day in court. As it was said in *Johannessen vs. United States*, 225 US 227, 238:

“Sound reason, as we think, constrains us to deny to a certificate of naturalization, procured ex parte in the ordinary way, any conclusive effect as against the public.”

Also, our Supreme Court has often held:

“No alien has the slightest right to naturalization unless all statutory requirements are complied with; and every certificate of citizenship must be treated as granted upon condition that the Government may challenge it as provided in Sec. 15 and demand its cancellation unless issued in accordance with such requirements. *If procured when prescribed qualifications have no existence in fact it is illegally procured: * * **” *U. S. vs. Ginsberg*, 243 US 472, 475. (Emphasis ours.)

“In exercising its power, Congress has authorized the Courts to grant American citizenship only if the alien has satisfied the conditions imposed by Congress for naturalization. * * * And so *‘if a certificate is procured when the prescribed qualifications have no*

existence in fact it may be cancelled by suit. Tutuñ vs. U. S., 970 US 578. — Baumgartner vs. U. S., 322 US 665, 672. (Emphasis our.)

"If an anarchist is naturalized, the United States may bring an action under Sec. 15 to set aside the certificate on the grounds of illegality. Since Congress by Sec. 7 of the Act forbids the naturalization of anarchists, the alien anarchist who obtains the certificate has procured it illegally *whatever the naturalization court might find.*" *Schneiderman vs. U. S.*, 320 US 118, 163). (Emphasis ours.)

For these reasons, therefore, plaintiff government must prevail on the jurisdictional question that defendant was not eligible to become a citizen either when he filed his naturalization petition or when he took the oath, because admittedly, within the ten-year statutory period, he had been a member of the Communist Party of the U. S., an organization that advised, advocated, or taught overthrow of this government by force or violence.

As to Fraud

Under the fraud section of the complaint, the government must not only prove that the Communist Party of the U. S. was an organization with objectives above noted [fol. 288] (which we have already held it has and which finding is made a part of this conclusion), but it must also prove that defendant knew that the Communist Party of the U. S. was such an organization advocating overthrow of this government by force or violence. This we also believe it has, by evidence that was "clear, unequivocal and convincing", part of which, added to what we stated under "As to Illegality", is as follows:

Among other witnesses, Leo Syrakis testified, in part:

(a) That he was recruited into the Communist Party of the U. S. by defendant and that defendant and he attended closed meetings of the Party together;

(b) That defendant in his talks advocated overthrow of this government by force or violence at closed meetings of the Communist Party of the U. S.;

(c) That defendant had often stated at closed meetings that the aims of the Communist Party of the U. S. could not be realized by "vote" alone;

(d) That defendant was director of agitation and propaganda of the unit of the Communist Party of the U. S. to which they both belonged;

(e) That defendant was general secretary of the Greek "fraction" of the Communist Party of the U. S. and member of the "buro" of the Greek "Fraction"; and

(f) That defendant presided over the Communist Party of the U. S. meeting which held the trial to expel him, Syrakis, from the Party.

William Nowell testified also in part:

(a) That defendant attended lectures delivered by him in the 1930's where Nowell taught, advised and advocated overthrow of this government by force or violence as one of the aims and objectives of the Communist Party of the U. S.;

(b) That defendant attended closed meetings of the [fol. 289] Communist Party of the U. S. with him, Nowell, in the 1930's, among which were many functionary meetings;

(c) That defendant, in the 1930's, received orders from and gave reports to him, Nowell, who was then a District Functionary of the Communist Party of the U. S.; and

(d) That defendant's position with the Greek "Fraction" in the 1930's was of great importance to the Communist Party of the U. S.

Defendant himself testified:

(a) That from 1931 to 1938, he was a member and attended closed meetings of the Communist Party of the U. S.;

(b) That in 1938, the General Secretary of the Party directed that all aliens cease their membership in the Party, whereupon defendant withdrew;

(c) That after his withdrawal and up and including the day of his naturalization, he believed in the aims and

objectives of the Communist Party of the U. S. which he said did not advocate overthrow of this government by force or violence.

(d) That he circulated and distributed the Daily Worker along with other Communist literature;

(e) That in 1934 and 1935, he was General Secretary of the Greek "Fraction" of the Communist Party of the U. S. in Detroit and as such made reports to the National Committee in New York City; and

(f) That he knew Syrakis and Nowell.

Plaintiff has also proven by competent testimony that defendant held other offices of trust and responsibility in the Communist Party of the U. S. during the years 1931 through 1938; and as a member of a "unit" and a "fraction", made speeches which advocated overthrow of this government by force or violence; went to national conventions and was most active in all its affairs, particularly in the distribution of Communist literature. All of which adds up to a discharge of the burden of proof resting on plaintiff and we find, therefore, that defendant was guilty of fraud in securing his American citizenship.

The Fifth Amendment

May we add this further thought: That while defendant apparently objects to cancellation of his American citizenship, we doubt very much that he will consider its loss a major catastrophe.

Early in the hearing, defendant admitted that he had been a member of the Communist Party of the U. S. and that he severed his affiliation not because he disbelieved its ideologies nor had learned that it was planning overthrow of this government by force or violence. What he really did was to go through the motions of resigning only because his commanding officers ordered him to do so.

Then, when he was asked "Are you a Communist" which meant "are you a Communist today" he refused to answer and sought refuge in the much-abused Fifth Amendment to the Constitution of the United States by declaring that he feared his answer "might tend to incriminate him."

And to this hour not one word has been uttered by him against Communism or the Communist Party of the U. S. or any other Communist Party, so any illusion that he might have been "confused" when he made out his petition for naturalization completely vanishes.

There are those in this country who undoubtedly believe [fol. 291] that the Fifth Amendment should justifiably be utilized whenever the occasion presents. This court does not impugn their sincerity. We only question the rationale of their conclusions. For the ordinary crimes prohibited by our Constitution or Acts of Congress—yes. But we are not fully convinced it was the intention of the founding fathers that the Fifth Amendment should be available where one's loyalty to that Constitution becomes suspect by refusal to answer a question of this nature. As stated in *Brown vs. Walker*, 161 U.S. 591, the amendment should not be construed "to protect witnesses against every possible detriment which might happen to them from their testimony, nor to unduly impede, hinder or obstruct the administration of criminal justice." So while this court permitted defendant the cloak provided by the Fifth Amendment, we did so with many misgivings. The shield may easily become a sword.

Incidentally, how could defendant know that his admission of membership in the Communist Party today—if such is a fact—could even "tend" to incriminate him unless he also knew what it advised, advocated and taught? The word "tend" might present a loophole for answer, but in this particular case the loophole is a small one.

It must be remembered that the very oath which this defendant took at the time he became an American citizen required that he would "support and defend the constitution and laws of the United States against all enemies, foreign and domestic." Still he insisted at this trial upon exemption from testifying as to whether or not he is a Communist, even in the light of what we know about that party today. Thus, in effect, he said, "I will not tell whether I am a Communist or belong to the Communist [fol. 292] Party, because it might be that that organization wants to destroy our government by force or violence." In other words, "I will not wholeheartedly 'support and defend the constitution and laws of the United States against all enemies, foreign and domestic.'" Yet this

man was a member of the Communist Party of the U. S. at one time. And we believe he knew then, knows now, and approves what the Communist movement intends to accomplish in this country. Is it not fair to conclude that he took the oath with reservations, a mental attitude condemned by our Supreme Court in *Orth vs. U. S.*, 142 Fed 2nd 969-70?

New conditions alter cases. The situation in the world is not normal. Security at home today demands trust in each other. As in times gone by, Cicero gave emphasis to pride of country by shouting "I am a Roman", it is our opinion that all true Americans should be even more anxious to cry out, "I am an American", at every opportunity, and if denying membership in a certain organization is deemed the slightest aid to promoting our security, denunciation of membership therein should be considered a supreme privilege if not a duty, particularly when you have taken the oath which our Supreme Court has said "relates to a state of mind and is a *promise of future conduct*." (Emphasis ours.) (*Krauer vs. U. S.*, 328 US 654.)

In the case at bar, it is a paradox that this defendant seeks protection of the flag in an American court but evidently only long enough so that the party or philosophy in which he will not deny membership can destroy that Constitution and trample upon that flag, robbing everybody else of the very liberties and freedoms of which he now takes advantage. His current refusal to testify is in [Vol. 293] our opinion more evidence of his fraud at the time he took the oath.

Conclusion

We hesitate to deprive anyone of his American citizenship and, incidentally, this is the first case, we have been informed, at least in this circuit, where defendant in a Nationality proceeding first testified that he had been a member of the Communist Party of the U. S. during the statutory period and then refused to answer the question "Are you a Communist or a member of the Communist Party today?" But it must be borne in mind that this is not a criminal case. It is not an action under the so-called Smith Act. While membership in the Communist Party is probably some evidence of guilt, no court to our knowledge has pointedly and definitely said that such member-

ship is in itself a crime. Further and we repeat, the fact that defendant failed to answer the question whether he is now a Communist is not a reason why this court now revokes that citizenship. We find in favor of the government's position regardless of the Fifth Amendment, since we decided the legality of defendant's refusal to testify, in his favor.

It is also interesting to note that Polites' counsel writes, "The candor of the defendant deserves consideration of this court in evaluating the testimony." With this we agree. But, as stated in *Carlson vs. Landon*, 342 US 524, *evasiveness* (as well as candor) of the witness might be taken into consideration as to whether or not he knows what the Communist movement stood for then, stands for today, and his participation therein.

[fol. 294] Defendant unquestionably was far from candid. On the contrary, he was evasive.

We believe that the wonderful gift of being an American citizen is so valuable that avenues for proclaiming faith and allegiance to our great country should be sought with zeal—not the dark alleys of evasion by the exercise of questionable, technical rights.

An order in compliance with this opinion will be presented for our signature.

/s/ Frank Picard, United States District Judge.

[fol. 295] IN UNITED STATES DISTRICT COURT

ORDER OF CANCELLATION—August 20, 1953

Present: The Honorable Frank A. Picard, United States District Judge

Upon the records and files of the above action and from a full hearing in open court, and in accordance with an opinion filed August 13, 1953, and on motion of Dwight K. Hamborsky, Assistant United States Attorney for the Eastern District of Michigan.

It is Ordered, Adjusted, and Decreed that the order of this Court entered on April 6, 1942, admitting the defendant Guss Polites as a citizen of the United States of Amer-

ica, be and the same is hereby revoked, set aside and declared void, and that the Certificate of Naturalization issued by virtue of said order, of April 6, 1942, be and the same is hereby cancelled, null and void, and

It is Further Ordered, Adjudged, and Decreed that the Clerk of this Court transmit to the Immigration and Naturalization Commissioner at Washington, D. C., a certified copy of the judgement, order and decree, together with the original certificate of naturalization of the defendant, if in his possession; and

It is Further Ordered, Adjudged, and Decreed that the defendant Guss Polites be and is hereby forever restrained and enjoined from setting up or claiming any rights, privileges, benefits or advantages whatsoever under said order of April 6, 1942, or under the Certificate of Naturalization issued by virtue of said order.

Frank A. Picard, United States District Judge.

[fol. 295a] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

Civil No. 11,820

UNITED STATES OF AMERICA, PLAINTIFF,

VS

GUS POLITES, DEFENDANT

NOTICE OF APPEAL—filed October 15, 1953

Notice is hereby given that Gus Polites, defendant above-named, hereby appeals to the Circuit Court of Appeals for the Sixth Circuit from the final judgment and order cancelling citizenship entered in this cause on the 20th day of August, 1953.

Goodman, Crockett, Eden & Robb, by Geo. W. Crockett, Jr., Attorneys for Defendant, 3220 Cadillac Tower, Detroit 26, Michigan. Woodward 3-6268

Dated: October 15, 1953

[fol. 295b] [File endorsement omitted]

No. 12206

IN UNITED STATES COURT OF APPEALS, FOR THE SIXTH CIRCUIT

Civil No. 11820

GUS POLITES, APPELLANT,

v.

UNITED STATES OF AMERICA, APPELLEE

ORDER DISMISSING APPEAL—Filed November 10, 1954

Upon stipulation of the parties to this cause, the appeal herein is hereby dismissed with prejudice and without cost to either party.

Approved for entry:

/s/ Potter Stewart, United States Circuit Judge.

[fol. 296] IN UNITED STATES DISTRICT COURT

MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO RULE 60 (b) OF THE FEDERAL RULES OF CIVIL PROCEDURE—Filed Aug. 6, 1958

The defendant, Guss Polites, by Goodman, Crockett, Eden & Robb, his attorneys, moves the Court, pursuant to Rule 60 (b) (5) and (6), for an order vacating and setting aside the final judgment heretofore entered in this cause by this Court (per Hon. Frank A. Picard) on August 20, 1953, and reinstating the judgment of naturalization granted to this defendant by this Court on April 6, 1942.

The judgment of cancellation herein was entered pursuant to Section 338(a) of the Nationality Act of 1940 (Title 8 U.S.C. 738(a), cancelled defendant's citizenship upon the grounds that the same was fraudulently and illegally procured. The opinion of the Court is reported at 127 F. Supp. 768.

This motion is based upon the entire record and trans-

cript of evidence in this case and upon the attached affidavit of counsel for the defendant at the trial of this cause.

In addition, the defendant shows as follows:

(1) Rule 60 (b)-(5) and (6) provides:

"(b) . . . On motion and upon such terms as are just, the Court may relieve a party . . . from a final judgment . . . for the following reasons: . . . (5) . . . it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment . . ."

(2) The judgment in this proceeding was rendered prior to the recent May 26, 1958 decisions of the United States Supreme Court in *Nowak vs. United States* and *Maisenberg* [fol. 297] *vs. United States*, 78 S. Ct. 955-972, (Nos. 12,391 and 12,576, respectively in this Court).

(3) *Nowak* and *Maisenberg* (supra) presented issues of first impression with reference to the following Question 28 which appears in the Preliminary Form of Petition for Naturalization and which formed the basis for the Trial Court's decision and final order in each of these cases:

"(28.) Are you a believer in anarchy? Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country?"

They also were the first denaturalization cases involving Communist Party membership to reach the Supreme Court since the 1943 decision in *Schneiderman vs. United States*, 320 U. S. 118.

(4) In *Nowak* and *Maisenberg* (supra) judgments were entered by this Court cancelling the defendants' citizenship on grounds of fraudulent and illegal procurement. This Court found that each defendant had falsely answered "No" to the above-mentioned question No. 28. In reversing these judgments, the Supreme Court held:

(a) A member of the Communist Party could reasonably interpret Question No. 28 on his naturalization form (Exh. 2) as not inquiring into membership in the Communist Party and, hence, his negative answer to

that question cannot serve as a basis for a finding of fraud.

(b) Question No. 28 is too ambiguous to predicate a charge of fraudulent procurement thereon.

(c) Assuming that lack of attachment to the Constitution can be shown by proof of membership in an organization teaching and advocating violent overthrow of the government, such advocacy must be advocacy of "violent action" and not "expressions of opinion or predictions about future events."

[fol. 298] (d) A charge of illegal procurement of citizenship based upon alleged membership in the Communist Party, cannot be sustained where the evidence fails to show (and, a fortiori, the trial court did not find) that the defendant was aware that the organization was engaged in the kind of illegal advocacy proscribed by law during the period of his membership therein.

(e) The Nationality Act of 1940 did not make membership or holding office in the Communist Party a ground for loss of citizenship.

(5) At the hearing on this motion defendant will present to the Court, a copy of the Petitioner's brief and the Government's brief in the Supreme Court in the *Nowak* and *Maisenberg* cases wherein the evidence in those cases is summarized. A comparison of the record and evidence in the instant case with that in *Nowak* and *Maisenberg* will indicate the following:

(a) The allegations of fraud and illegality asserted against the defendant and the legal issues raised by the pleadings herein, do not differ in any essential respect from those before the Supreme Court in the *Nowak* and *Maisenberg* cases. (supra);

(b) The principal witness with respect to the teaching and advocacy of the Communist Party was the same in each case, William Nowell, and his "expert" testimony in this respect, together with the books and literature relied upon, was the same in each case.

(c) Question No. 28 (supra) in the Preliminary Petition for Citizenship is the same, and was answered the

same, in each case; and this question is the basis of the charge and the finding of fraud in each case.

(d) The evidence relied on by the Government to show knowledge of illegal advocacy in both *Nowak* and *Maisenberg* was much stronger than the evidence contained in the record here. •

(e) In both *Nowak* and *Maisenberg* there was a finding by the Trial Court that defendant knew the organization as one teaching and advocating violent overthrow [fol. 299] of the Government; in the instant case the Trial Court held that the charge of illegality required no such finding and no such proof.

(f) In this case, as in *Nowak* and *Maisenberg*, the record is clear that at no time during the naturalization was the defendant asked whether or not he was or had been a member of the Communist Party.

(6) From all of the above, and particularly the law as clarified by the Supreme Court's opinions in *Nowak* and *Maisenberg*—it now appears that the above-mentioned judgment of cancellation is voidable; that it is no longer equitable that said judgment should have prospective application; and, in addition, the following reasons justify relief from the operation of said judgment:

(a) *The finding of fraud cannot be sustained as a matter of law.*

The finding of fraud here—as in *Nowak* and *Maisenberg*—is predicated upon defendant's allegedly untruthful answer to Question 28. But *Nowak* held that it was not “implausible” to read Question 28 “in its totality as inquiring solely about anarchy”; and in any event, the latter part of the question was held to be “too ambiguous to sustain the fraudulent procurement charge based on petitioner's answer to it.” (78 S. Ct. at 958).

(b) *The Complaint failed to allege grounds sufficient to warrant the relief prayed.*

The Complaint here does not charge, the evidence does not support, nor did the Trial Court find, that the

Communist Party, in the period of defendant's admitted membership therein, engaged in teaching or advocacy of the violent overthrow of the Government "by language reasonably and ordinarily calculated to incite" persons to such action. (See *Yates vs. United States*, 354 U. S. 298, cited in *Nowak* (supra)). Hence, defendant's membership in the Communist Party—even had it continued to the date of his naturalization—was not a ground for loss of his citizenship. (78 S. Ct. at p. 960).

[fol. 300] (c) *The Trial Court failed to properly interpret the Law.*

Under the decisions in *Nowak* and *Maisenberg*, it is essential to denaturalization based upon alleged proscribed Communist Party membership, that the Court not only find that the organization engaged in the proscribed kind of advocacy, but also that the defendant either knew of such advocacy or himself engaged in such advocacy. Here, however, the Trial Court expressly held that:

"It is not necessary to prove that defendant had knowledge of the objectives of the Communist Party of the U. S. If he was a member of that party, within the statutory ten year period, which he admits, and it develops that such organization was then advising, advocating or teaching forcible or violent overthrow of this government, he was not then eligible for citizenship, the prohibition being jurisdictional."

(7) No rights have vested, attached or accrued by reason of the above-mentioned judgment of cancellation, nor will any one be prejudiced by the vacation and setting aside of said judgment. There is a manifest injustice to this defendant which results from allowing the judgment of cancellation, with its injunction provision, to continue to have prospective application. Not only is this defendant deprived of his rights as a citizen, but he currently faces imminent deportation to Greece as a result of the order of deportation entered against him on November 15, 1955. The validity of this order is presently before this Court

in *Politis vs. Sahli*, Civil No. 17653 (Hon. Arthur F. Lederle).

Respectfully submitted, Goodman, Crockett, Eden & Robb, By: Geo. W. Crockett, Jr., Attorneys for Defendant, 3220 Cadillac Tower, Detroit 26, Michigan, Woodward 3-6268.

Dated: August 6, 1958

[fol. 301] AFFIDAVIT IN SUPPORT OF MOTION FOR RELIEF FROM JUDGMENT UNDER RULE 60 (b), FEDERAL RULES OF CIVIL PROCEDURE—Filed Aug. 6, 1958

STATE OF MICHIGAN,
County of Wayne, ss:

ERNEST GOODMAN, being duly sworn, deposes and says:

My name is Ernest Goodman, and I make this affidavit in support of defendant's motion herein to set aside the final judgment of this Court cancelling his citizenship.

(1) Defendant is a 59-year old native of Greece who was lawfully admitted to this country in 1916 when he was 17 years old and has lived here ever since. He is married to a native born American citizen and has two children and two grandchildren, all American born. He has no criminal record. He is employed as a truck salesman of food products.

(2) Defendant was naturalized by this Court on April 6, 1942; and his naturalization was cancelled in the above-entitled proceedings on August 20, 1953.

(3) I was counsel for the defendant at the trial of the above entitled cause, and I am personally acquainted with the entire record in this proceeding and have examined the official transcript of the entire testimony in this cause.

(4) This is a denaturalization proceeding instituted on June 16, 1952. The Complaint was filed pursuant to Section 338(a) of the Nationality Act of 1940 (54 Stat. 1158; U.S.C. Tit. 8, Sec. 738 a). It charged that defendant's citizenship was illegally and fraudulently obtained, in that:

[fol. 302] a. Within the ten (10) year period prior to his naturalization he had been a member of the Com-

...nunist Party which was alleged to be an organization which taught and advocated the violent overthrow of the government of the United States; and that he was, therefore, a person who was ineligible for naturalization; was not of good moral character and was not attached to the principles of the Constitution.

b. That he wilfully concealed such membership during his naturalization process and, therefore, was guilty of fraud.

(5) Defendant's Answer, placed in issue each of the above charged:

(6) At the conclusion of the trial, and upon direction of the Court, the Government filed a "Memorandum of Testimony" which purports to summarize the evidence relied on by the Government. A copy of that Memorandum is attached hereto as "Exhibit A". The following is submitted as a more complete summary of the evidence advanced at the trial:

The *defendant* was called by the Government as its first witness. He identified Govt. Exhibits 1 and 2 as his Petition for Naturalization and his Preliminary Form of Petition for Naturalization respectively (Trial Tr. 15). The [fol. 303] latter document contained, as Question No. 28, the inquiry:

"Are you a believer in anarchy? Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country?"

Each portion of this inquiry was answered "No." Defendant also testified that he "was a member of the Communist Party from 1931 up to 1938" (Tr. 30). He denied such membership in the period 1938 to the date of his naturalization, April 6, 1942; and, as to the period subsequent to his naturalization, his reliance upon his Fifth Amendment privilege was sustained by the Trial Court (Tr. 30, 97.)

Defendant further stated that during the period of his membership he attended closed "unit" meetings of the Party consisting of five to ten members (Tr. 32), but he held no office in the Party (Tr. 34). He admitted that he

also was a member of the Greek "fraction" of the Party—made up of local Party members of Greek ancestry (Tr. 42), and he sent one report to the National Office of the Greek Fraction in New York (Tr. 78-80). At "unit" and "fraction" meetings the group discussed Communist literature on relief, unemployment, the *Daily Worker*, and the "Scottsboro" and "Tom Mooney" cases (Tr. 77-78). He further stated that for a short period in 1934 or 1935 he served as the Secretary (Tr. 70) and was a member of the "Bureau" of the local branch of an organization known as the Greek Workers Educational League (Tr. 32, 50). This latter organization, as well as the local Unemployed Councils of which he was a member (Tr. 53), is claimed to have been a Communist "front" organization. Defendant also testified that during this period he was unemployed, [fol. 304] frequently on relief, and that his Party activity consisted of distributing leaflets and assisting a committee engaged in organizing food workers into a union (Tr. 51-56, 65-66). Some of the leaflets he distributed were issued and circulated by the Communist Party.

Defendant left the Party in 1938 following the decision of that organization to exclude or discourage aliens from membership (Tr. 132):

Among other things, defendant denied that he ever believed in, taught or advocated the violent overthrow of the Government (Tr. 118-120, 132); or was ever a member of an organization which so taught or advocated. Nor did he recall ever attending a meeting where the writings of Lenin had been discussed (Tr. 156-157).

The *Naturalization Examiner* who had questioned defendant at the time of naturalization, testified that he did not ask the defendant if he was "a member of the Communist Party." (Tr. 484-487).

The witness, *Leo Syrakis*, identified himself as a former member of the Party and the Greek Workers Educational League; and stated that he was recruited to the "unit" by defendant (162-164). He identified the defendant as the "Agit Prop Director" of this Communist "unit" and stated that in January, 1935, at a "unit" meeting in the witness' home, the defendant spoke to the group (Tr. 167-173) and:

"... agitated the unit members how to become better Communists in order to carry on the workers'—the

workers'—the class struggle and gradually overthrow the present system by force and violence." (Tr. 167)

"... to better themselves and extend the existence of the class struggle, and gradually strengthen themselves and gradually overthrow the present system by force [fol. 305] and violence." (Tr. 167)

"The exact words was the strengthening of the working class, to fight, to cause trouble and gradually strengthen themselves in order to overthrow the present government by force and violence." (Tr. 169)

"He say the way to organize, agitate—agitate the workers, organize them, in order to follow up when the time comes to overthrow the government by force and violence." (Tr. 179)

Syrakis further testified that in "April and May, 1935" during a subscription campaign for the Greek paper "Forward", he heard defendant tell "a Greek Fraction meeting" (Tr. 179-180):

"... that we had to go ahead and subscribe and get the money that we supposed to collect in order to reach them workers and wait in our movement until the time comes when we would be able to overthrow the present government by force and violence." (Tr. 180).

The witness admitted that he gave a statement to the Government in 1950 about Polites, but did not state at that time that he heard Polites advocate force and violence (Tr. 216):

Two other witnesses, *Nowell* and *Crouch*—each a former Party member—were called by the Government as "experts" on the Party's teaching and advocacy. Each recounted the offices held and the "instruction" received by him in the Party; and expressed the opinion that in the years embracing the period of defendant's membership, the Party was an organization that taught and advocated the violent overthrow of the government. Neither testified [fol. 306] as to any specific occasion when specific words of

such advocacy were used; but each identified numerous pamphlets, books and publications of the Party which were then received in evidence and referred to by the witness as supporting his conclusion concerning the character of the Party's advocacy. (Tr. 354-366). There was no evidence that defendant had read or knew about any of these publications (Tr. 366) or had been present when any specific documents were discussed or distributed.

There is no evidence that *Crouch* had ever seen or knew the defendant. *Nowell* testified (Tr. 26) that he had attended closed Party meetings at the Greek Workers Club with the defendant "between 1931 and 1936"; that defendant was "Secretary of the Greek Fraction" and was a "high functionary" (Tr. 261-62); that defendant was present when the witness lectured on the aims and objectives of the Party, including violent overthrow of the Government (Tr. 274); and that on several occasions (Tr. 264) "Polites took the floor and spoke as to the objectives of the program of the Communist Party, mentioning local campaigns and their progress at the time." *Nowell* also stated—again without benefit of time, place or specific language—that:

"He [Polites] has, in speeches, advocated the overthrow of the government by force and violence, during my presence." (Tr. 265)

(7) The opinion of the Trial Court is reported at 127 F. Supp. 763. The Court made no separate Findings of Fact and Conclusions of Law.

(8) The Judgment of Cancellation was entered on August 20, 1953 and provides:

[fol. 307] (a) That the order of this Court entered on April 6, 1942 admitting defendant to citizenship "is hereby revoked, set aside and declared void and that the Certificate of Naturalization . . . is hereby cancelled."

(b) —(Defendant ordered to surrender Certificate of Naturalization).

(c) That defendant "be and he is hereby forever restrained and enjoined from setting up or claiming any rights, privileges, benefits or advantages whatever . . . under the Certificate of Naturalization."

(9) Notice of Appeal was filed by the defendant but the appeal was never perfected. It was subsequently dismissed by stipulation of counsel.

(10) Following the dismissal of defendant's appeal, and on January 31, 1955, deportation proceedings were instituted against the defendant based upon his admitted prior membership in the Communist Party subsequent to his entry. The transcript of his above testimony in the instant case was received in evidence at his deportation hearing and an order of deportation was entered against him on November 15, 1955 and was affirmed by the Board of Immigration Appeals on January 6, 1956.

(11) By letter dated January 13, 1958 defendant was directed by the Immigration Service to report in ten (10) [fol. 308] days in complete readiness for deportation to Greece.

(12) On January 22, 1958 defendant filed his Complaint in this Court (Civil No. 17653) seeking judicial review of the above-mentioned order of deportation. In his Complaint he contends, inter alia, that:

(a) the evidence at his deportation hearing was insufficient to show the kind of Communist Party membership required under the Supreme Court's decision in *Rowoldt vs. Perfetta*, 78 S. Ct. 180; and

(b) that the aforementioned judgment of this Court cancelling his citizenship is invalid.

This proceeding is presently pending before Chief Judge Lederle of this Court.

And further affiant saith not.

Ernest Goodman, Affiant.

Subscribed and sworn to before me this 5th day of August, A. D. 1958.

Notary Public _____ County, Mich.

My Commission expires: _____

[Vol. 309] EXHIBIT "A" TO AFFIDAVIT

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT
OF MICHIGAN, SOUTHERN DIVISION

No.

UNITED STATES OF AMERICA, Plaintiff,

vs.

GUS POLITES, Defendant

MEMORANDUM OF TESTIMONY

Proposition I: The Government has established that the Communist Party of the United States, (C.P.U.S.) is an organization which advises, advocates or teaches the overthrow by force or violence of the Government of the United States through the testimony of:

A. Witness WILLIAM NOWELL, who testified as follows:

1) That he was a member of C.P.U.S. from 1929 through 1936.

2) That he attended the Lenin Institute at Moscow, which was operated by the Communist International, (C.I.) and the Russian Communist Party, in 1931 and 1932, where he was taught that the C.P.U.S. was a section C.I. and that both of these organizations advocated the overthrow of the Government by force and violence.

3) That as District Director of Education of the Communist Party, he had supervision of the Workers' School at Detroit where he taught the aims and objectives of the C.P.U.S., among which was the overthrow of this Government by force.

4) That as director of the Communist Party book store, he supervised the distribution of Communist literature and identified certain books (exhibit 5) as having been published, distributed and circulated by the C.P.U.S. during the period of 1931 through 1936,

and which books had been used as text books in the Workers' School.

[fol. 310] 5) That these books (exhibit 5) represented the aims and objectives of the C.P.U.S. and C.I. and advocated the overthrow of this Government by force and violence.

6) Examination of these books establishes that the C.I. and C.P.U.S. advised, advocated and taught the overthrow of the Government of the United States by force or violence.

B. Witness PAUL CROUCH, who testified as follows:

1) That he was a member of C.P.U.S. from 1925 to 1942 and studied extensively the aims and objectives of the Communist Party.

2) That he held many important positions in the C.P.U.S.

3) That as a representative and leader of the C.P.U.S. he taught and lectured at official Communist schools on the aims and objectives of the Communist Party, among which were the overthrow of this Government by force and violence.

4) That he taught and lectured in Communist schools on tactics for carrying out the violence and overthrow of the Government, and supervised and organized such tactics and methods that would bring about the overthrow of the Government by force and violence.

5) He contributed the material contained in two of the books identified as exhibit 5, and further identified all of the books as having been circulated and distributed by the C.P.U.S. during 1931 to 1938.

6) He wrote many articles, one of which was identified as exhibit 6, appearing in the Daily Worker, in which he advocated the overthrow of the Government by force.

7) That the books (exhibit 5) advocated the overthrow of this Government by force and violence.

[fol. 311] *Proposition II:* The Government has established that the defendant knew, or should have known, that one of the aims and objectives of the C.P.U.S. was the overthrow of the Government by force and violence.

A. Actual knowledge:

- 1) Witness Leo Syrakis stated that he had heard the defendant advocate overthrow of the Government by force and violence at closed meetings of the C.P.U.S.
- 2) Witness Syrakis testified that the defendant stated at closed meetings that the aims and objectives of C.P.U.S. could not be accomplished by, "vote."
- 3) Witness William Nowell testified that he lectured on the aims and objectives of C.P.U.S. at meetings of the party where the defendant was present and where he (Nowell) stated that the aims of C.P.U.S. was the overthrow of this Government by force and violence.

B. Evidence indicating actual knowledge:

Defendant's own testimony:

- 1) That he was a member of C.P.U.S. from 1934 to 1938 and attended closed meetings of the Party.
- 2) That he voluntarily withdrew his membership from the C.P.U.S. in 1938 upon receiving a directive from the General Secretary of the Party that all aliens cease membership in the Party.

(Note: Expert witness Crouch testified that he was present at a meeting of the Central Committee of the C.P.U.S. in 1938 where Earl Browder stated that alien members of the C.P.U.S. should be dropped from the membership rolls of the Party in order to evade the provisions of the Immigration and Naturalization laws aimed at deportation of, or prevention of the natural- [fol. 312] ization of, members of the Communist Party; that by giving up membership in the C.P.U.S., aliens would facilitate their naturalization; that members of C.P.U.S. who were dropped from membership rolls were to retain their seniority in the Party and would be permitted to maintain their allegiance to the Party.)

3) That he still believed in the aims and objectives of the Communist Party after withdrawing his membership and up to and including the day of his naturalization.

4) That he circulated and distributed Communist literature, including the Daily Worker.

5) That he was General Secretary of the Greek Fraction of the C.P.U.S. in Detroit in 1934 and 1935 and in that capacity he made reports to the National Committee of the C.P.U.S. in New York City; that he was also a member of the Buro of the Fraction.

6) That he admitted knowing Syrakis and Nowell and did not refute their testimony.

Testimony of Leo Syrakis:

1) That he was recruited into the C.P.U.S. by the defendant and thereafter attended closed meetings of the Party with the defendant.

2) That the defendant was agitation and propaganda director of the Communist Party unit to which they belonged.

3) That he succeeded the defendant as general secretary of the Greek Fraction of the C.P.U.S. in Detroit.

4) That the witness and the defendant were members of the Buro of the Greek Fraction.

5) That the defendant was in charge of the Communist Party meeting which conducted the trial to expell the witness from the Party.

[fol. 313] *Testimony of William Nowell:*

1) That he attended closed C.P.U.S. meetings with the defendant, including many functionary meetings.

2) That the defendant was General Secretary of the Greek Fraction of the C.P.U.S. for the District of Michigan.

3) That the defendant was a member of the Buro of the Greek Fraction of the C.P.U.S.

4) That the witness as a District Functionary of the

C.P.U.S. gave orders to the defendant and received reports from the defendant.

5) That defendant's position within the Greek Fraction was very important to the C.P.U.S.

Fred W. Kaess, United States Attorney, Dwight K. Hamborsky, Assistant U. S. Attorney.

[fol. 314] IN UNITED STATES DISTRICT COURT

OPINION OF THE COURT—Entered Nov. 19, 1958

STATEMENT OF FACTS

Guss Polites entered the United States from Greece in 1916, filed petition for naturalization October 6, 1941, and received Certificate of Naturalization April 6, 1942. Complaint to cancel his citizenship was filed June 16, 1952, and after full hearing we ordered cancellation August 20, 1953, in accordance with opinion filed August 13, 1953 (amended February 23, 1955). Appeal therefrom was commenced, but dismissed by stipulation of counsel. The motion now under consideration informs us that petitioner in another suit in this District is contesting deportation proceedings.

More than six years after order of cancellation, August 6, 1958, Polites filed a motion for relief from judgment pursuant to Rule 60 (b) (5) and (6):

"On motion and upon such terms as are just, the court may relieve a party * * * from a final judgment, * * * for the following reasons: * * * (5) * * * it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment."

claiming that the recent decisions of *Nowak vs. U.S.* and *Maisenberg vs. U.S.*, 356 US p. 660 and p. 670 (decided May 6, 1958) should equitably and legally control the issues in this case.

While recent decisions would not usually control unless the facts therein and applicable law were the same as con-

fronted the court in the Polites matter, we present these pertinent facts:

Both Nowak and Maisenberg were naturalized under the [fol. 315] Act of 1906; but Polites was naturalized under the Act of 1940. Of course this difference in fact does not control the question of law, but it is well to observe in connection therewith that these questions were asked of Nowak and Maisenberg:

"28. Are you a believer in anarchy? * * * Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country?"

While on the other hand Polites was put under a stricter obligation. He was asked to

" . . . list memberships or activities in clubs, organizations, or societies."

to which he then or had belonged and he also answered that

"15. Within the past 5 years I *have not* been affiliated with or active in (a member of, official of, a worker for) organizations, devoted in whole or in part to influencing or furthering the political activities, public relations, or public policy of a foreign government."

Again this is not controlling of the law but is part of the background of this case since he failed to tell the truth in either instance.

CONCLUSIONS OF LAW

The Nowak and Maisenberg cases, *supra*, which petitioner relies on, hinge upon three considerations, the first being the construction of above question 28. On page 663 the Supreme Court says:

" . . . , Question 28 on its face was not sufficiently clear to warrant the firm conclusion that when Nowak [fol. 316] answered it in 1937 he should have known that it called for disclosure of membership in non-

anarchistic organizations advocating violent overthrow of government. . . ."

Second, on page 665:

" . . . the Nationality Act of 1906 (emphasis ours) "under which this preliminary naturalization form was issued, prohibited anarchists, but *not* communists, from becoming American citizens,"

and, finally, on page 666 the same court said:

" . . . it has not been established that Nowak knew of the Party's illegal advocacy."

These decisions do not as contended by Polites clearly control the instant case warranting relief from judgment, if for no other reason than that the question construed is entirely different in form and content (actual knowledge of intent of communist sympathy is not required here), the applicable acts differ, and because the Act of 1940, under which Polites was naturalized *did* provide the following prohibition which did not appear in the 1906 Act:

U.S.C. 705, 54 Stat. 1141:

No person shall hereafter be naturalized as a citizen of the United States—* * *

(b). Who believes in, advises, advocates, or teaches, or who is a member of or affiliated with any organization, association, society, or group that believes in, advises, advocates, or teaches—(1) the overthrow by force or violence of the Government of the United States or of all forms of law; (no actual knowledge is necessary) "or (2) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or any other organized government, because of his or their official character; or (3) the unlawful damage, injury, or destruction of property; or

[fol. 317] (4) sabotage." (Emphasis ours)

Petitioner emphasizes that deportation embodies harsh punitive measures. But his deportation is being considered elsewhere while we are concerned solely with his citizenship naturalization, a privilege and obligations sought by him and bestowed by the sovereign only upon the conditions it selects.

In support of Rule 60's applicability, petitioner cites *Leaks vs. Myers*, 27 LW 2130 and *Klapprott vs. U.S.*, 335 US 601. Neither applies. But *Ackermann vs. U.S.*, 340 US 193 (1956) states:

"Neither the circumstances of petitioner nor his excuse for not appealing is so extraordinary as to bring him within *Klapprott* or Rule 60 (b) (5)."

In this case therefore the court had the benefit of Rule 60 (b)'s provisions but would not follow the *Klapprott* case *supra*, because there was no "excusable neglect" in *Ackermann*, but there was in *Klapprott*. Therefore, since petitioner abandoned his appeal, as he states, "because of the controlling decisions" we have absolutely no alternative but to follow the *Ackermann* decision coupled with the Sixth Circuit Court of Appeals' statement in *Berryhill vs. U.S.*, 199 F. 2d 217 (1952) which refutes petitioner's reasoning by saying:

"It appears to be the settled rule that a change in the judicial view of the applicable law, after a final judgment, is not a basis for vacating a judgment entered before announcement of the change."

Ordinarily we would have granted petitioner's prayer, particularly under subsection (b) (5) of Rule 60, authorizing us to do so, if

"it is no longer equitable that the judgment should [fols. 318-319] have prospective application;"

But in our opinion, our Court of Appeals specifically eliminates such holding where the only reason for abandoning the appeal was because of the then status of the law under the "controlling decisions."

For the reasons given petition is denied.

s/ Frank A. Picard, United States District Judge.

Dated: November 19, 1958.

[fol. 320] IN THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—October 6,
1959

(Omitted in printing)

[fol. 321] IN THE UNITED STATES COURT OF APPEALS

JUDGMENT—Filed October 16, 1959

The above cause coming on to be heard upon the transcript, the briefs of the parties, and the arguments of counsel in open court, and the Court being duly advised,

Now Therefore it is Ordered, Adjudged and Decreed that the judgment of the District Court be and is hereby affirmed for the reasons set forth in the Opinion of Judge Picard.

[fol. 322] Clerk's Certificate Omitted in Printing.

[fol. 323] SUPREME COURT OF THE UNITED STATES, October
Term, 1959

No. 631

GUS POLITES, Petitioner, .

vs.

UNITED STATES

ORDER ALLOWING CERTIORARI—February 23, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 324] SUPREME COURT OF THE UNITED STATES, October
Term, 1959

No. 631

[Title omitted]

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA
PAUPERIS—April 4, 1960

On Consideration of the motion of the petitioner for
leave to proceed further herein in forma pauperis in this
case,

It is Ordered by this Court that the said motion be, and
the same is hereby, granted.



FILE COPY

Office Supreme Court, U.S.

FILED

JAN 5 1960

JAMES R. BROWNING, Clerk

IN THE
Supreme Court of the United States

OCTOBER TERM 1959

No.

~~671~~ 25

GUS POLITES,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS FOR THE
SIXTH CIRCUIT**

GOODMAN, CROCKETT, EDEN & ROBB,

Attorneys for Petitioner,

3220 Cadillac Tower,

Detroit 26, Michigan.

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IN THE
Supreme Court of the United States

OCTOBER TERM 1959

—◆—
No.

—◆—
GUS POLITES,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent
—◆—

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS FOR THE
SIXTH CIRCUIT**
—◆—

Petitioner prays for a Writ of Certiorari to review a final judgment of the United States Court of Appeals for the Sixth Circuit which affirmed a judgment of the United States District Court for the Eastern District of Michigan, Southern Division. The District Court denied a Motion, filed by Petitioner pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, asking that the judgment of denaturalization against Petitioner be vacated and the judgment of naturalization reinstated.

OPINIONS BELOW

No printed opinion was filed by the Court of Appeals. Copy of the Court's order of affirmance appears in the Appendix to this Petition. The opinion of the District Court appears to be unreported. It is reproduced in the Appendix to this Petition.

JURISDICTION

The order of affirmance by the Court of Appeals was entered on October 16, 1959. The jurisdiction of this Court is invoked pursuant to the provisions of Title 28, U.S.C.A. Sec. 1254.

QUESTIONS PRESENTED

I.

Has Petitioner been deprived of his citizenship without due process of law by reason of the District Court's erroneous interpretation and application of the denaturalization law (8 USC. Sec. 738(a)), where, as here the proofs adduced by the Government and the findings made by the Trial Court, failed to meet the standards for denaturalization as subsequently clarified in this Court's decisions in *Nowak v. United States* and *Madsen v. United States* 356 U.S. 660 and 670, 78 S. Ct. 955 and 960?

II.

Is the remedy provided in Rule 60(b) of the Federal Rules of Civil Procedure available to set aside a judgment of denaturalization and restore citizenship to one whose citizenship has been cancelled erroneously and without due

process of law; and notwithstanding an appeal from such cancellation was perfected and subsequently was dismissed by stipulation following this Court's denial of certiorari in three (3) similar cases from the same Court of Appeals raising identical legal and factual issues?

STATUTES INVOLVED

The Act of June 29, 1906 (34 Stat. L. Part 1, p. 596) as amended, provided in Section 7 thereof:

"That no person who disbelieves in or is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to organized government * * * shall be naturalized or be made a citizen of the United States."

The above Act of June 29, 1906 was superseded by the Nationality Act of 1940 (Title 8, U.S.C., Sec. 700 et seq.). The pertinent portions of the 1940 Act are the following:

"Section 705. No person shall hereafter be naturalized as a citizen of the United States—

- (a) Who advises, advocates, or teaches, or who is a member of or affiliated with any organization, association, society, or group that advises, advocates, or teaches opposition to all organized government; or
- (b) Who believes in, advises, advocates or teaches, or who is a member of or affiliated with any organization, association, society or group that believes in, advises, advocates, or teaches—the overthrow by force or violence of the Government of the United States or of all forms of law;

"The provisions of this section shall be applicable to any applicant for naturalization who at any time within a period of ten years immediately preceding the filing of the petition for naturalization is, or has been, found to be within any of the clauses enumerated in this section, notwithstanding that at the time petition is filed he may not be included in such classes."

• • • • •

"Section 707(a). No person, except as hereinafter provided in this Act, shall be naturalized unless such petitioner,

- (1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years and within the State in which the Petitioner resided at the time of filing the petition for at least six months,
 - (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and
 - (3) during all the periods [five (5) years] referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed of the good order and happiness of the United States."
- • • • •

"Section 738(a). It shall be the duty of the United States District Attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of Section 301 (Title 8 U. S. C. Sec. 701), in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling

the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured."

Rule 60(b)(5) and (6) of the Federal Rules of Civil Procedure provides:

"(b) * * * on motion and upon such terms as are just, the Court may relieve a party * * * from a final judgment * * * for the following reasons: * * * (5) * * * it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment * * *."

STATEMENT OF THE CASE

Petitioner, 39 years of age, is a native of Greece who has lived in this country continuously since he was sixteen (16) years old. He is married to a native born American citizen and they have two children and two grandchildren. He has no criminal record. Until approximately a year ago, he was employed as a truck salesman of food products. Failing health now prevents his employment. He has been ordered deported to his native Greece and his application for a suspension of deportation has been denied.

Petitioner's Naturalization

On April 6, 1942, Petitioner was naturalized by the Federal District Court at Detroit (App. 3a)¹. At the time of his naturalization the Nationality Act of 1940 (54 Stat. 1137, 1141, 8 U.S.C. 738(a)) was in effect. Section 705 of that Act made an alien ineligible for naturalization if he

¹ ("App. —" refers to the Appellant's appendix in the Court of Appeals.)

had been a member of an organization advocating violent overthrow of the Government at any time during a period of ten (10) years preceding the filing of his petition for naturalization. A petitioner for naturalization also was required to affirm his "attachment to the principles of the Constitution of the United States."

The form of Preliminary Petition for Naturalization (Govt. Exh. 2, App. 18a) executed by Petitioner in 1940 contained the following as Question No. 28:

"Are you a believer in anarchy? * * * Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country? (Govt. Exh. 2.)"

Petitioner answered "No."

The form of Petition for Naturalization (Govt. Exh. 1, App. p. 16a), executed by Petitioner stated:

"(15) I am not, and have not been for the period of at least 10 years immediately preceding the date of this petition, an anarchist; nor a believer in the unlawful damage, injury, or destruction of property, or sabotage; *nor a disbeliever in or opposed to organized government; nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government.*" (Emphasis supplied.)

Petitioner's Denaturalization Proceedings

Ten years after Petitioner's naturalization and on June 16, 1952 the Government filed its Complaint (App. 2a) in the Court below seeking revocation of Petitioner's naturalization upon the grounds of fraud and illegal procurement. (Section 338(a) of the Nationality Act of 1940 (8 U.S.C. Sec. 738(a))). It charged that Petitioner had been a member of the Communist Party from 1933 to 1941 and had concealed such membership at the time of his naturalization. It further charged that naturalization was illegally procured because Petitioner had been a member of the Communist Party within the ten (10) years preceding the filing of his petition for naturalization; that the Communist Party, during the period of his membership, taught and advocated the violent overthrow of the Government of the United States; that he "was familiar with and approved of the activities, aims, and teachings of the Communist Party"; and that he was, therefore, ineligible for citizenship and lacking in attachment to the Constitution.

Additionally, the Complaint alleged that in 1940, and prior to the filing of his petition for naturalization, Petitioner executed and filed an Alien Registration Form in which he falsely denied membership or activity in any "clubs, organizations or societies" and falsely stated that "within the past five (5) years he had not been affiliated with or active in any organizations devoted to furthering the political activities or public policy of any foreign government."

Petitioner's summary of the entire testimony at the trial (App. 43a-47a) was filed with his Rule 60(b) motion. The Government's summary of the proofs upon which it relied to establish these charges, was filed at the request of the Trial Court (App. 50a-54a).

Petitioner, called by the Government as a witness, testified that he was a member of the Communist Party from 1931 to 1938 but held no Party office (App. 44a). Relying upon his Fifth Amendment privilege, he declined to state whether or not he was a member of the Communist Party at any time subsequent to his 1942 naturalization (App. 44a).

The Naturalization Examiner, called as a witness, testified that at the time he interviewed Petitioner he did not ask Petitioner if he was or had been a member of the Communist Party (App. 45a).

Other witnesses, former members of the Party, were called to identify Party publications and to testify concerning Petitioner's activities in the Party and related organizations. Their testimony is sufficiently set forth in the above summaries.

The opinion of the District Court cancelling Petitioner's citizenship held that Petitioner had obtained citizenship fraudulently and illegally (App. 22a).

Judgment of denaturalization was entered on August 20, 1953. Notice of Appeal was filed and the appeal was docketed in the Court of Appeals.

Meanwhile, the Court of Appeals had under consideration three (3) denaturalization appeals from the Eastern District of Michigan. (*Sweet, Chomiak and Charnowola*, 211 F. 2d 118.) Each of these three (3) appeals involved denaturalization judgments, entered under the Nationality Act of 1940, because of (a) failure to disclose prior Communist Party membership, and/or (b) membership in that organization within the statutory ten (10) year period. The proofs as to the Party's advocacy in each case were the same as here and were based upon the same Marxist

Leninist writings. In each of these three (3) appeals the appellant was represented by the same counsel as this Petitioner.

After Petitioner's appeal had been filed but before briefs were due, the Court of Appeals entered judgments of affirmance in each of the above three (3) cases. Petitions for Certiorari were filed in each case in this Court. (October Term, 1954, Nos. 73, 74 and 75) and counsel for Polites thereupon obtained from the Court of Appeals the following order extending the time for filing briefs in his appeal:

"extended to 30 days from the date of final disposition by the Supreme Court of the United States of the Petitions for Certiorari in the cases of *Sam Sweet v. United States*, *Charnowola v. United States*, and *Chomiak v. United States*. * * *

Following the denial of certiorari in the last mentioned three (3) cases (348 U. S. 817), the parties stipulated for dismissal of Petitioner's appeal with prejudice.

Thereafter, and on January 31, 1955, deportation proceedings were instituted against Petitioner culminating in a final order of the Board of Immigration Appeals, entered on January 6, 1956, directing Petitioner's deportation to his native Greece because of his admitted prior membership in the Communist Party subsequent to his entry into this country. (See Sec. 241 (a)(6)(C) of the Immigration and Nationality Act, 8 U.S.C. Sec. 1251 (a)(6)(C)).

The Present Proceeding

On May 6, 1958, this Court decided *Nowak v. United States* and *Maisenberg v. United States*, 356 U.S. 660 and 670, 78 S. Ct. 955 and 960, reversing judgments of denaturalization theretofore rendered in each of these cases by the same District Judge who had heard Petitioner's denaturalization.

Relying upon *Nowak* and *Maisenberg*, Petitioner, on August 6, 1958, filed Motion under Rule 60(b) of the Federal Rules of Civil Procedure (App. 37a) to vacate the denaturalization judgment in his case.

The District Court denied the motion for two reasons. The Court apparently believed that the 1940 naturalization statute under which Petitioner was naturalized was distinguishable from the 1906 Act, as amended, which was before this Court, in *Nowak* and *Maisenberg*. And second, the District Court believed that it was precluded by this Court's decision in *Ackermann v. United States*, 340 U.S. 193 and the decision of the Sixth Circuit in *Berryhill v. United States*, 199 F. 2d 217, from granting relief under Rule 60(b) based upon "a change in the judicial view of the applicable law." The reluctance of the District Court in reaching this decision is apparent from the following concluding portion of its opinion (App. 58a):

"Ordinarily we would have granted petitioner's prayer, particularly under subsections (b)(5) of Rule 60, authorizing us to do so, if it is no longer equitable that the judgment should have prospective application. But in our opinion, our Court of Appeals specifically eliminates such holding * * *"

REASONS FOR GRANTING THE WRIT

I.

1. In *Nowak* and *Maisenberg*, this Court reiterated and applied legal principles which it had enunciated in *Schneiderman*, 320 U.S. 118. During the "Cold War" years and particularly in the period following *Dennis v. United States*, 341 U.S. 494, the Government—and in large measure the District Courts—regarded *Schneiderman* as setting forth merely a rule of evidence in denaturalization cases; unmindful of the Constitutional safeguards that rule was intended to preserve for all naturalized citizens.

If, as we contend, Petitioner's denaturalization proceeding is indistinguishable on any material issue from *Nowak*, then clearly he has been erroneously deprived of his citizenship. This loss and the obvious consequences it entails under the circumstances here presented is so unfair that the order of cancellation and its continued operation amounts to a denial of substantive due process to this Petitioner. Certainly the consequences are such as to warrant an exercise by this Court of its supervisory power over the lower Federal Courts to insure that a federal question entailing such grave consequences not be decided—or allowed to stand—in a way that conflicts with applicable decisions of this Court.

2. On its material facts Petitioner's denaturalization proceeding was practically identical with *Nowak*. If any factual difference is to be noted, then *Nowak* was a stronger case for the Government by reason of the testimony of *Nowak's* personal advocacy and his allegedly active participation in the higher echelon of the Communist Party.

The complaint in Petitioner's case (App. 2a) is almost identical with the complaints in *Nowak* and *Maisenberg* in setting forth the allegations of fraud and illegality. Thus illegality in both is predicated upon a claimed proscription of Communist Party membership under both the 1906 and 1940 Acts and a claimed lack of attachment because of prior Communist Party membership; and fraud is predicated upon alleged falsity in answering the identical Question No. 28, in the identical Preliminary Petitions for Naturalization forms in each case.

The only difference which need be noted in the factual allegations of the Complaints is that in Petitioner's case fraud also was sought to be predicated upon allegedly false answers in his Alien Registration form. We discuss this later at pp. 16-17.

In both Petitioners' case and in *Nowak* the evidence indicated and the Trial Court found that neither was asked during the naturalization process concerning Communist Party membership. But, unlike *Nowak*, Petitioner testified as to his prior membership and his activities in that organization. And his evidence coupled with that of the Government's witnesses, confirms the extremely minor role he had among the dozen or more Greek members of the Party in Detroit (App. 43a and 52a).

The Government's so-called expert witness—Nowell—was the same in both cases; and his testimony concerning the Party's alleged advocacy is the same. Likewise, the books and pamphlets relied on by the Government to show the Party's advocacy were the same in each case.

On the specific question of Petitioner's personal advocacy or his knowledge of alleged illegal advocacy by the Party, a comparison should be made between this Court's summary of the alleged advocacy in *Nowak* (356 U. S. at p. 666) and

the Government's own summary of Petitioner's alleged advocacy and knowledge. Such a comparison indicates that, on the facts, Petitioner's case is well within the holding of this Court in *Nowak*.

3. In its legal theory the Government's case for Petitioner's denaturalization is likewise indistinguishable from *Nowak*. The denaturalization proceedings in both cases were grounded upon Sec. 338(a) of the Nationality Act of 1940 (54 Stat. 1137, 1158), notwithstanding *Nowak* was naturalized under the 1906 Naturalization Act. Unquestionably, the language of the two acts (*supra*, p. 2), is not the same on the question of political beliefs. The 1906 Act barred disbelievers in organized government, whereas the 1940 Act added an expressed reference to persons and organizations teaching and advocating violent overthrow of the Government of the United States.

What is important, however, is not the difference in language, nor the difference in the actual reach of the two statutes; but rather, the Government's interpretation of that difference and this Court's ruling on that interpretation in *Nowak* and *Maisenberg*.

"The interpretation of the 1906 Act, contended for by the Government and accepted and relied on by the Trial Court in its decision in *Nowak* (133 F. Supp. 191) was that the 1940 statute, in expressly referring to advocacy of violent overthrow, merely made explicit what was already implicit in the previous law, i.e.; that the 1906 Act, as amended, necessarily barred Communists from citizenship because membership in that Party was incompatible with attachment to the Constitution." (See the District Court's "Conclusions of Law" in *Nowak*, 133 F. Supp. 192.) In short, both the Government and the Trial Court tried the *Nowak* case as though the political proscriptions in the 1906 Act and the 1940 Act were the same.

This, also was the rationale of the affirmance by the Court of Appeals in *Nowak* (238 F. 2d 282), as evidenced by that Court's reliance in those cases upon its prior holdings in the *Sweet*, *Chomiak* and *Charnowola* cases, 211 F. 2d 118, each of which involved naturalization under the 1940 and not the 1906 Act. Thus the Court of Appeals in *Nowak* said:

"Upon consideration of the briefs, the oral arguments and the records in these two cases, [*Nowak* and *Meisenberg*], we find that all points of law made and argued by appellants * * * have been adjudicated adversely to the contention of appellants in the opinion of this Court * * * in [*Sweet*, *Chomiak* and *Charnowola*]."

Of these three cases—*Sweet*, *Charnowola* and *Chomiak*—the last bears the closest resemblance on its facts to Petitioner's case. *Chomiak* was the only one of the three where the proofs failed to show and the Trial Court did not find that the alien was asked and answered falsely questions concerning membership in the Communist Party. Such membership was admitted at the trial and denaturalization was based entirely upon membership in a proscribed organization. (See the Government's joint brief in this Court in opposition to Certiorari in each of these three (3) cases, Nos. 73, 74 and 75, October Term, 1954, at pps. 4-12 and 15-18).

In *Chomiak* (as in *Nowak*, *Meisenberg*) the Government contended that ~~proof~~ of knowledge by the alien of the organizations alleged illegal advocacy was not necessary under either the 1906 or the 1940 Act to sustain denaturalization based upon illegal procurement. And both the Trial Court and the Court of Appeals accepted this interpretation of the 1940 Act; and this Court denied certiorari (348 U.S. 817). In the course of the subsequent Trial of Petitioner's denaturalization case in the same District Court, both the Government and the Trial Judge made repeated

references to *Chomiak*, *Sweet* and *Charnowola*, as having settled the law of the case. See Trial Transcript at pps. 6-9, 348-353, 380-388, 425-428 and 484-498.

The Government's theory of the sameness of the ~~political~~ proscriptions of the two Acts and the sameness in the nature and extent of the showing required to sustain denaturalization under either act, also was urged upon this Court in *Nowak*. And, the correctness of this theory appears to have been assumed by this Court, for purposes of its decision, when it said:

... But this proof [of membership without a showing of awareness of the illegal aspects of the Party's program (*Nowak, supra*, at p. 666)] does not suffice to make out the Government's case, for Congress in the *Nationality Act of 1940* did not make membership or holding office in the Communist Party a ground for loss of citizenship. (*Nowak, supra*, at p. 668). (Emphasis supplied.)

Making this assumption, namely, that illegal procurement can be shown with respect to naturalization under either Act, by proof that the alien was a member of the Communist Party with knowledge that the Party advocated violent overthrow in terms of incitement to action (*Maisenberg, supra* at p. 672), this Court, nevertheless, concluded in *Nowak* and *Maisenberg*, that the proofs were insufficient to make such a showing under either the 1906 or the 1940 Act.

Nowak, then, represents not only this Court's view concerning the proper interpretation to be placed upon the political proscription and the character of the proofs needed to cancel citizenship obtained under the 1906 Act, but it likewise represents this Court's views concerning the requirements for cancellation, on the ground of illegality of citizenship obtained under the 1940 Act as well.

In other words, Nowak stands for the two basic propositions that denaturalization may not be decreed under Section 338a of the Nationality Act of 1940, because of fraud in any case where the claim of fraud is predicated upon a failure by an applicant for citizenship to disclose his past Communist Party membership in answer to Question 2 on the preliminary naturalization form used in Nowak's case and in Petitioner's case; nor may such denaturalization be decreed because of illegal procurement in any case where the claimed lack of attachment or membership in a prescribed organization is based solely upon proof of membership or officership in the Communist Party without proof of illegal advocacy by that organization and the applicant's awareness of such advocacy.

Applying each of these propositions to Petitioner's denaturalization proceeding, it is obvious that he has been deprived of his citizenship because of an erroneous interpretation and application of the 1940 Act.

4. The opinion of the Trial Court, however, points out one issue raised by the complaint in Petitioner's case but not before the Courts in either *Nowak* or *Maisenberg*. Thus, the opinion refers to the fact that in his 1940 Alien Registration form (Govt. Exh. 3) Petitioner had stated the following:

"10. I am, or have been within the past five years, or intend to be engaged in the following activities:

In addition to other information, list memberships or activities in clubs, organizations, or societies * * * (None)."

"15. Within the past five (5) years, I have been affiliated with or active in (a member of, official of, a worker for), organizations, devoted

whole or in part to influencing or furthering the political activities, public relations or public policy of a foreign government."

And the opinion asserts that Petitioner "failed to tell the truth in either instance."

Whether the Trial Court is suggesting this as an additional support for its finding of fraud, is not clear. But it is not without significance that in its opinion on Petitioner's denaturalization (App. 22a), the Court made no mention of this Alien Registration form and the sole evidence in the record on this issue is the form itself.

In any event, however, the questions and answers in Petitioner's Alien Registration Form, if relevant and material to the issues presented in his denaturalization case,² must be tested by the same standards of definiteness applied by this Court to the questionnaire in *Nowak*. And tested by these standards it is apparent that the questions and answers in this form do not warrant the Trial Court's conclusions of falsity.

The conclusion follows, therefore, that since Petitioner's case is indistinguishable in fact and in law from the Government's charges and the issues determined in *Nowak*, and since his case was not decided in accordance with the principles of law as clarified by this Court in those cases, the judgment of denaturalization against the Petitioner was erroneous.

² Appellant's motion to strike from the Complaint in his denaturalization proceeding all references to his Alien Registration as irrelevant and immaterial was denied (App. 13a, par. 5). (See Trial Tr. pp. 19-20.)

II.

1. It appears, we think, from the concluding paragraph of the Trial Court's opinion denying Petitioner's motion, that the real basis for the Court's decision was not an adverse exercise of discretion under the Rule; nor a belief that the law was properly applied in Petitioner's denaturalization; but rather, that Rule 60(b) was inapplicable, as a matter of law, to the situation presented here. Particular reliance is placed by the Trial Court on this Court's decision in *Ackermann v. United States*, 340 U. S. 193 and the opinion of the Court of Appeals for the Sixth Circuit in *Berryhill v. United States*, 199 F. 2d 217 (1952).

Rule 60(b) in its pertinent part states:

"Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: * * * (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order, or proceeding was entered or taken.

• • •

Clause (6) of this Rule, "for all reasons except the five particularly specified [in the Rule] vests power in Court adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice." *Klapprott v. United States*, 335 U.S. 601 at 615. In this case, both in

equity and injustice will flow from the retention and the prospective application of the denaturalization judgment.

In the first place consideration must be given to the nature of a judgment of denaturalization and the consequences it entails. If a denaturalization judgment is annulled, there is no disturbance of property rights, no adverse adjustment of the status quo, no chance of injuring third persons. The Government is not harmed by a reacquisition of citizenship by one who should not have been deprived of it. If anything, the Government, as the body politic, would benefit by the correction of the injustice done one of its citizens.

Denaturalization is "the total destruction of the individual's status in organized society. It is a form of punishment more primitive than torture, for it destroys for the individual the political existence that was centuries in development." *Trapp v. Dulles*, 356 U.S. 86, 101. If an erroneous denaturalization judgment is allowed to stand, it may, and in this case will result in deportation to the added injury of the individual and his family. And this is so here because the alleged basis for denaturalization is also a ground for deportation. (See, *supra*, p. 9.) Petitioner's deportation will be unjust because predicated on an erroneous denaturalization judgment, but it will be unassailable on that account if the denaturalization judgment is not set aside in this proceeding. In the present case, Petitioner has lived in the United States for 43 years, since he was 16 years old. If the erroneous denaturalization judgment is allowed to stand, he will be exiled. It seems incredible that the Government, having inflicted on him the injury of an erroneous cancellation of his citizenship, should be able to utilize the judgment further so as to ruin his life completely.

2. The crux of the Trial Court's decision, affirmed below, is the following:

“... Therefore, since Petitioner abandoned his appeal, as he states, ‘because of the controlling decisions’ [in *Chomiak*, *Sweet* and *Charnowola*] we have absolutely no alternative but to follow the Ackerman decision coupled with the Sixth Circuit Court of Appeals’ statement in *Berryhill v. U. S.*, 199 F. 2d 217 (1952) which refutes petitioner’s reasoning by saying:

‘It appears to be the settled rule that a change in the judicial view of the applicable law, after a final judgment, is not a basis for vacating a judgment entered before announcement of the change.’”

Ackermann v. United States, 340 U. S. 193, denied relief under clause (6) of Rule 60(b), not because the denaturalization judgment was not appealed, but because in the opinion of a majority of this Court the reasons advanced for failing to appeal—financial hardship and reliance upon poor advice from an Immigration Service employee—were deemed insufficient to overcome the view that a free and deliberate election had been made by Petitioner not to appeal. Even so Justices Black, Frankfurter and Douglas dissented, observing that the decision “neutralizes the humane spirit of the Rule and thereby frustrates its purpose” (at 202). Justice Clark did not participate.³

Ackermann, therefore, does not dictate a hard and fast principle to be applied indiscriminately whenever an appeal is not taken or is subsequently withdrawn. Instead, it requires an appraisal of the circumstances in each case.

³ Since the Supreme Court’s 1958 decision in *United States v. Ohio Power Co.*, 353 U. S. 98, 77 S. Ct. 652 (discussed herein at p. 24) it is fair to suggest that *Ackermann* must be confined to its facts.

an exercise of discretion. In Petitioner's case the Trial Court declined to exercise any discretion because it believed that *Ackermann* precluded it from doing so. At most, *Ackermann* stands for the proposition that Rule 60(b)(6) may not be invoked to vacate an erroneous judgment, which might have been reversed by appeal but for the fact that the aggrieved party "slept on his rights" and deliberately elected not to appeal in a situation where he was not prevented from doing so and where it could not be said that an appeal would have been hopeless. It certainly does not mean that a failure to appeal, or the dismissal of an appeal by stipulation, prevents the Trial Court from exercising discretion under Rule 60(b). Cf. *McGrath v. Potash*, 199 F. 2d 166, discussed herein at p. 25.

3. *Berryhill v. United States*, 199 F. 2d 217 (1952), relied on by the District Court below, is in accord with our interpretation of *Ackermann*. After reviewing the facts the Court there found that no justifiable reason existed for petitioner's failure to pursue his remedy by appeal. The case involved simultaneous conflicting claims upon the Veterans Administration for the proceeds of a National Service insurance policy. Under the terms of the policy, the father of the veteran was named as beneficiary and a foster sister was named as contingent beneficiary. Monthly payments were made to the father until his death, after which claims were asserted by the foster sister as contingent beneficiary and by the heirs at law of the father. The Veterans Administration denied the foster sister's claim and she filed suit. The District Court ruled that a foster sister was not a proper person to be named as beneficiary under the National Service Life Insurance Act. No appeal was taken from this ruling.

At the time of the District Court ruling the Third Circuit had held for, and the Eighth Circuit had held against,

similar claims asserted by adopted brothers and sisters. The District Court neither relied on nor cited either of these two decisions. Subsequently, this Court reversed the Eighth Circuit and upheld the Third Circuit. Thereupon, the foster sister filed with the District Court a motion pursuant to Rule 60(b) (5) and (6) for relief from the previous judgment. The motion was denied and an appeal taken.

The Court of Appeals held subsection (5) of Rule 60(b) inapplicable because the judgment was not based upon any prior judgment subsequently reversed. It held subsection (6) inapplicable because petitioner's motion "states no reason for not taking an appeal" and the failure to appeal "was a free and deliberate choice."

In the instant case it cannot be said that Petitioner "made a considered choice not to appeal" (*Ackermann*, at p. 198).⁴ As pointed out above (p. 8-9) Petitioner here not only perfected his appeal in the face of the appellate Court's outstanding adverse decisions in *Chomiak*, *Sweet* and *Charnowola*, *supra*, but requested and was granted leave to delay filing his brief pending this Court's action in those three cases. And not until this Court had indicated an unreadiness in those three cases to consider the same legal arguments which Petitioner's appeal presented, did he finally stipulate for dismissal of his appeal.⁴ Surely, under those circumstances, it cannot be said here, as in *Ackermann* and *Berryhill*, that no justifiable reason is shown for his failure to pursue his remedy by appeal or that his failure to appeal "was a free and deliberate choice."

We come, then, to the one statement in *Berryhill* which the District Court below held was controlling here; namely,

⁴ Compare the questions presented in the Petition for Certiorari in *Nowak*, *supra*, at pps. 33-42 and the questions presented in Petition for Certiorari in *Sweet*, *supra*, at pps. 17-19.

that "a change in the judicial view of the applicable law, after final judgment, is not a basis for vacating a judgment entered before announcement of the change."

Parenthetically, it is observed here that the minimum relief which Petitioner seeks is not necessarily a vacation of the denaturalization judgment; but rather relief from the prospective application and future operation of that judgment. In this respect Petitioner's case is peculiarly dissimilar from *Berryhill* and other cases in which relief from a money judgment is sought under Rule 60(b),⁵ and is more in accord with the historical purpose that Rule was intended to achieve. See *Moore's Fed. Prac.*, 2 ed., Vol 7, pps. 283-303.

The short answer to the argument that what is involved here is "a change in the law", is, of course, that nowhere in *Nowak* and *Maisenberg* is there the slightest suggestion that this Court was making or intended to make a "change in the judicial view of the applicable law." Instead, the most that can be said in this connection is that either the precise issues had never been resolved by this Court, or the Court merely reiterated and applied its previous holding in *Schneidermann*, *supra*, with respect to the quality and the sufficiency of the proofs required to divest one of citizenship because of prior Communist Party membership. In either instance it would be incorrect to regard this as "a change in the judicial view of the applicable law."

But there is a more basic reason why the above quotation from *Berryhill* cannot be accepted as an unvarying rule to be applied to all final judgments regardless of its consequences in a particular case. And this reason finds expression, not only in what this Court recently said in

⁵ Cf. *Block v. Thousand Friend, et al.*, 170 F. 2d 428, where the Second Circuit held that relief from a money judgment should be granted under the Rule notwithstanding no appeal had been taken, where the District Court had approved the local O. P. A. order for repayment of rent and subsequently the Washington office of O. P. A. had overruled the local office.

United States v. Ohio Power Co., 353 U.S. 98, 77 S. Ct. 652 (1958), but in what the Court did. That case involved a suit by the power company to recover taxes paid under protest. The Court of Claims allowed recovery and the Government's petition for certiorari was denied. Thereafter, two (2) petitions for rehearing also were denied by this Court. Meanwhile, the Court of Claims reiterated its holding in a second similar case and more than one (1) year later, a different result was reached by the Court of Appeals for the Second Circuit in another similar case. This Court granted certiorari in both of these two latter cases and, at the same time, *sua sponte* set aside its six months old denial of rehearing in the *Ohio Power* case in order that the case "might be disposed of consistently with the companion cases" in which certiorari was granted.

In "the companion cases" the Government's position was sustained; and this Court thereupon reconsidered the Government's second petition for rehearing in the *Ohio Power* case, vacated the order denying certiorari, granted the petition for certiorari, and reversed the judgment below which had been adverse to the Government's contention. All of this was accomplished by the Court without benefit of a Rule 60(b), as Justice Harlan correctly pointed out in his dissent (*supra*, at p. 104, note 13). The justification given by the Court has peculiar application to this Petitioner:

"We have consistently ruled that the interest in finality of litigation must yield where the interests of justice would make unfair the application of our rules. This policy finds expression in the manner in which we have exercised our power over our own judgments, both in civil and criminal cases."

Among the cases cited by the Court as reflecting this policy, was *Remmer v. United States*, 348 U.S. 904, where, follow-

ing denial of review by this Court, a different result was reached by the Court in later companion cases involving the same issues. This Court then granted a delayed petition for rehearing in *Remmer*, restored the case to the docket and then remanded it to the Court of Appeals "in order that the Court on the whole record may reconsider the case in the light of our recent decisions"

At a minimum, the same disposition made by this Court in *Ohio Power* should be made by this Court on behalf of this Petitioner.

In *McGrath v. Potash*, 199 F.2d 166, the Government was confronted with precisely the same legal question now raised by this Petitioner and successfully pursued the same course of action as Petitioner here.

Deportation proceedings had been instituted against *Potash*. He sought an injunction, contending that his deportation hearing was not being conducted in conformity with the Administrative Procedures Act. The District Court granted a permanent injunction and the Government appealed. While the appeal was pending, the same issue was decided by this Court in another case and its decision was in accord with the District Court's decision in the *Potash* case. Accordingly, the Government's appeal in the *Potash* case was dismissed by stipulation. Later, Congress amended the law so as to make the Administrative Procedures Act inapplicable to deportation hearings. The Government then moved under Rule 60(b)(6) to vacate the above-mentioned final judgment. The District Court denied the motion and the Court of Appeals reversed, holding that the subsequent change in the applicable law removed the basis for giving any prospective effect to the prior judgment.

Finally, mention should be made of *Title v. United States* (C.A. 9th, decided January 6, 1959, cert. den. June 15,

1959). The Petitioner there sought relief by motion under Rule 60(b) from a judgment of denaturalization. The Complaint filed by the Government in the denaturalization proceeding on October 21, 1954 did not include the affidavit of good cause, but *Title's* motion to dismiss the complaint for this reason, was denied by the District Court and on July 14, 1955 judgment of denaturalization was entered. *Title* filed an appeal, on September 8, 1955, which was later dismissed by the Court of Appeals on February 27, 1956 "for failure of appellant to prosecute the appeal."

Meanwhile, on October 10, 1955, this Court granted certiorari in *United States v. Zucca*, 350 U.S. 817, and on April 30, 1956, about two months after dismissal of *Title's* appeal, this Court decided in *United States v. Zucca*, 351 U.S. 91, that the affidavit of good cause "must be filed with the complaint when the [denaturalization] proceedings are instituted. Two years later, in the *Matles*, *Lucchese* and *Costello* cases (356 U.S. 256), this holding was reiterated.

It was not until two years after the issue had been determined in *Zucca* and on May 22, 1958, that *Title* moved to set aside and vacate his denaturalization judgment "on the ground that the judgment was void in that the required affidavit showing good cause was never filed and that it was no longer equitable that the judgment should have prospective application." The order denying his motion was affirmed, the Court of Appeals saying:

"* * * Were *Title's* appeal presently before us, we would reverse the judgment of denaturalization rendered against him by the district court. But that appeal he has voluntarily failed to prosecute. He is in the same status as any other individual who fails to protect fully his valid legal rights, by neglecting to perfect his appeal.

* * * * *

“ * * * Rule 60(b) was not intended to provide relief for error on the part of the court or to afford a substitute for appeal.” (Citing *Ackermann* and *Berryhill, supra*.)

The decision in *Title* is not in conflict with Petitioner's position here. The pertinent difference between the two, for purposes of Rule 60(b) relief, is that in *Title* (as in *Ackermann* and *Berryhill, supra*) the Petitioner, in a situation where he was not prevented from doing so and where it could not be said that an appeal would have been hopeless, nevertheless, made a free and deliberate choice not to perfect his appeal. *Zucca* was pending in this Court at the very time *Title's* appeal was pending in the Court of Appeals. But unlike the Petitioner here, *Title* neglected to preserve his appeal pending the outcome in *Zucca*; neglected to move within a reasonable time; and the record disclosed no reason for his neglect.

CONCLUSION

Certiorari should be granted.

Respectfully submitted,

GOODMAN, CROCKETT, EDEN &
ROBB,

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Dated: Detroit, Michigan,
December 16, 1959.

APPENDICES

APPENDIX A

No. 13,788

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Gus Polites,	}	Appellant,
		vs.
United States of America,		Appellee.

ORDER

(Filed October 16, 1959)

Before: McAllister, Chief Judge, Martin, Circuit Judge
and Weick, District Judge.

The above cause coming on to be heard upon the transcript, the briefs of the parties, and the arguments of counsel in open court, and the Court being duly advised,

Now therefore it is ordered, adjudged and decreed that the judgment of the District Court be and is hereby affirmed for the reasons set forth in the Opinion of Judge Picard.

Approved for entry:

Thomas V. McAllister,
United States Circuit Judge.

APPENDIX B

OPINION DENYING MOTION

(Entered November 19, 1958)

STATEMENT OF FACTS

Gus Polites entered the United States from Greece in 1916, filed petition for naturalization October 6, 1941, and received Certificate of Naturalization April 6, 1942. Complaint to cancel his citizenship was filed June 16, 1952, and after full hearing we ordered cancellation August 20, 1953, in accordance with opinion filed August 13, 1953 (amended February 23, 1955). Appeal therefrom was commenced, but dismissed by stipulation of counsel. The motion now under consideration informs us that petitioner in another suit in this District is contesting deportation proceedings.

More than six years after order of cancellation, August 6, 1958, Polites filed a motion for relief from judgment pursuant to Rule 60 (b) (5) and (6):

"On motion and upon such terms as are just, the court may relieve a party * * * from a final judgment, * * * for the following reasons: * * * (5) * * * it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment."

claiming that the recent decisions of *Nowak v. U. S.* and *Maisenberg v. U. S.*, 356 US p. 660 and p. 670 (decided May 6, 1958) should equitably and legally control the issues in this case.

While recent decisions would not usually control unless the facts therein and applicable law were the same as confronted the court in the Polites matter, we present these pertinent facts:

Both Nowak and Maisenberg were naturalized under the Act of 1906; but Polites was naturalized under the Act of 1940. Of course this difference in fact does not control the question of law, but it is well to observe in connection therewith that these questions were asked of Nowak and Maisenberg:

"28. Are you a believer in anarchy? . . . Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country? . . ."

While on the other hand Polites was put under a stricter obligation. He was asked to

" . . . list memberships or activities in clubs, organizations, or societies."

to which he then or had belonged and he also answered that

"15. Within the past 5 years *I have not* been affiliated with or active in (a member of, official of, a worker for) organizations, devoted in whole or in part to influencing or furthering the political activities, public relations, or public policy of a foreign government."

Again this is not controlling of the law but is part of the background of this case since he failed to tell the truth in either instance.

CONCLUSIONS OF LAW

The Nowak and Maisenberg cases, *supra*, which petitioner relies on, hinge upon three considerations, the first being the construction of above question 28. On page 663 the Supreme Court says:

"* * * Question 28 on its face was not sufficiently clear to warrant the firm conclusion that when Nowak answered it in 1937 he should have known that it called for disclosure of membership in non-anarchistic organizations advocating violent overthrow of government. * * *"

Second, on page 665:

"* * * the Nationality Act of 1906 (emphasis ours) under which this preliminary naturalization form was issued, prohibited anarchists, but *not* communists, from becoming American citizens, * * *"

and, finally, on page 666 the same court said:

"* * * it has not been established that Nowak knew of the Party's illegal advocacy."

These decisions do not as contended by Polites clearly control the instant case warranting relief from judgment, if for no other reason than that the question construed is entirely different in form and content (actual knowledge of intent of communist sympathy is not required here), the applicable acts differ, and because the Act of 1940, under which Polites was naturalized *did* provide the following prohibition which did not appear in the 1906 Act:

"U. S. C. 705, 54 Stat. 1141:

No person shall hereafter be naturalized as a citizen of the United States--* * *

(b) Who believes in, advises, advocates, or teaches, or *who is a member of or affiliated with any*

organization, association, society, or group that believes in, advises, advocates, or teaches—(1) the overthrow by force or violence of the Government of the United States or of all forms of law;” (no actual knowledge is necessary) “or (2) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or any other organized government, because of his or their official character; or (3) the unlawful damage, injury, or destruction of property; or (4) sabotage.” (Emphasis ours.)

Petitioner emphasizes that deportation embodies harsh punitive measures. But his deportation is being considered elsewhere while we are concerned solely with his citizenship naturalization, a privilege and obligations sought by him and bestowed by the sovereign only upon the conditions it selects.

In support of Rule 60's applicability, petitioner cites *Leaks v. Myers*, 27 LW 2130 and *Klapprott v. U. S.*, 335 US 601. Neither applies. But *Ackermann v. U. S.*, 340 US 193 (1950) states:

“Neither the circumstances of petitioner nor his excuse for not appealing is so extraordinary as to bring him within *Klapprott* or Rule 60 (b) (5).”

In this case therefore the court had the benefit of Rule 60 (b)'s provisions but would not follow the *Klapprott* case *supra*, because there was no “excusable neglect” in *Ackermann*, but there was in *Klapprott*. Therefore, since petitioner abandoned his appeal, as he states, “because of the controlling decisions” we have absolutely no alternative but to follow the *Ackermann* decision coupled with the Sixth Circuit Court of Appeals' statement in *Berryhill v.*

U. S., 199 F. 2d 217 (1952) which refutes petitioner's reasoning by saying:

"It appears to be the settled rule that a change in the judicial view of the applicable law, after a final judgment, is not a basis for vacating a judgment entered before announcement of the change."

Ordinarily we would have granted petitioner's prayer, particularly under subsection (b) (5) of Rule 60, authorizing us to do so, if

"it is no longer equitable that the judgment should have prospective application;"

But in our opinion, our Court of Appeals specifically eliminates such holding where the only reason for abandoning the appeal was because of the then status of the law under the "controlling decisions".

For the reasons given petition is denied.

/s/ Frank A. Picard,

United States District Judge.

Dated: November 19, 1958.

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JAMES R. BROWNING, Clerk

No. ~~631~~ 25

In the Supreme Court of the United States

OCTOBER TERM, 1959

GUS POLITES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 631

GUS POLITES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The court of appeals rendered no opinion. The opinion of the district court (R. 55-59; Pet. App. B 30-34) is not yet reported. The earlier opinion of the district court revoking petitioner's citizenship (R. 22-35) is reported at 127 F. Supp. 768.

JURISDICTION

The judgment of the court of appeals was entered on October 16, 1959 (R. 62). The petition for a writ of certiorari was filed on January 5, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

"R." designates the appendix to petitioner's brief in the court of appeals, now on file with the Clerk of this Court.

QUESTIONS PRESENTED

1. Whether, after petitioner stipulated to dismissal of his appeal from a judgment of denaturalization following the denial of petitions for writs of certiorari in related cases, he may collaterally attack that judgment under Rule 60(b) of the Federal Rules of Civil Procedure on the ground that subsequent decisions of this Court have established that his denaturalization was invalid.

2. Whether petitioner's denaturalization was valid.

STATUTE AND RULE INVOLVED

Section 305 of the Nationality Act of October 14, 1940, 54 Stat. 1141, provided in pertinent part:

No person shall hereafter be naturalized as a citizen of the United States—

* * *

(b) Who believes in, advises, advocates, or teaches, or who is a member of or affiliated with any organization, association, society, or group that believes in, advises, advocates, or teaches—

(1) the overthrow by force or violence of the Government of the United States or of all forms of law; * * *

* * *

(d) Who is a member of or affiliated with any organization, association, society, or group that writes, circulates, distributes, prints, publishes or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or

printed matter of the character described in subdivision (c).

* * * * *

The provisions of this section shall be applicable to any applicant for naturalization who at any time within a period of ten years immediately preceding the filing of the petition for naturalization is, or has been, found to be within any of the clauses enumerated in this section, notwithstanding that at the time petition is filed he may not be included in such classes.

Rule 60(b), Federal Rules of Civil Procedure, provides in pertinent part:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the

judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. * * *

STATEMENT

Petitioner, who was born in Greece and entered this country in 1916, was naturalized in the United States District Court for the Eastern District of Michigan on April 6, 1942 (R. 2-3, 8, 55). On June 16, 1952, the government instituted an action seeking cancellation of the certificate of naturalization under Section 338(a) of the Nationality Act of 1940, on the grounds of fraud and illegal procurement.

As to fraud, the complaint charged that, although petitioner had been a member of the Communist Party from 1933 to at least 1941, in the proceedings leading up to his naturalization he swore (1) that he had not within the past 5 years belonged to any clubs, organizations or societies, or organizations devoted in whole or in part to influencing or furthering the political activities of a foreign government² (2) that he believed in the form of government of the United States and (3) that he was attached to the principles of the Constitution of the United States. The charge of illegal procurement was that during the ten-year period preceding his application for naturalization petitioner was not a person of good moral character, was not attached to the principles of the Constitution,

² This answer was given by petitioner in December 1940 in registering as an alien pursuant to the Alien Registration Act of 1940.

and was knowingly a member of an organization which advocated overthrow of the Government of the United States by force or violence (R. 2-7). An affidavit of good cause detailing these charges was filed with the complaint (R. 8-12).

At the trial, evidence was introduced showing the illegal aims and objectives of the Communist Party (R. 50-52), and petitioner's active membership in the Party from 1931 to at least 1938 (R. 52-54).³ On August 20, 1953, the district court entered a decree revoking the judgment admitting petitioner to citizenship, cancelling the certificate of naturalization, and restraining the petitioner from claiming any rights under the certificate (R. 36). The court held (R. 23-27, 28-31) that the government had shown that the Communist Party, of which petitioner admittedly had been a member within ten years prior to naturalization, advocated the overthrow of the United States Government by force and violence; that petitioner was "guilty of fraud in securing his American citizenship"; and that he had illegally procured citizenship because he "was not eligible to become a citizen" due to his Communist Party membership within the ten-year period.

Petitioner noted an appeal from the judgment of the district court, but did not proceed further. In

³ Petitioner himself testified that he was a party member from 1931-1938, during which time he attended closed meetings; that he voluntarily withdrew from the Party in 1938 upon receipt of a directive from the General Secretary of the Party that all aliens cease membership in the Party; and that, despite his withdrawal, he still believed in the aims and objectives of the Party (R. 52-53).

1954 the appeal was dismissed with prejudice, by stipulation of counsel (R. 48, 55; Pet. 9).

On August 6, 1958, petitioner moved, pursuant to Rule 60(b)(5) and (6) of the Federal Rules of Civil Procedure (*supra*, pp. 3-4), to set aside the court's denaturalization judgment of August 20, 1953 (R. 37-49). He contended (R. 37-41) that, under the principles recently enunciated by this Court in *Nowak v. United States*, 356 U.S. 660 and *Maisenberg v. United States*, 356 U.S. 670, the judgment of denaturalization "is voidable" (R. 40).

The district court denied the motion (R. 59). It held that the *Nowak* and *Maisenberg* cases "do not * * * control the instant case" (R. 57); and that, in any event, petitioner could not collaterally attack the judgment in a Rule 60(b) proceeding on the ground that there had been "a change in the judicial view of the applicable law" (R. 58).

The court of appeals unanimously affirmed "for the reasons set forth" in the opinion of the district court (R. 62).

ARGUMENT

Approximately five years after entry of a final judgment of denaturalization against him, petitioner now seeks to vacate it by collateral attack under Rule 60(b). His substantive contention is that the legal theory upon which his denaturalization was based has been invalidated by the subsequent *Nowak* and *Maisenberg* decisions of this court. He seeks to justify his voluntary dismissal of the appeal from the denaturalization order, in which he could have litigated all the substantive questions he now at-

tempts to raise, on the ground that the appeal could not have prevailed in the light of the decisions of the court of appeals (to which he was appealing) in the *Sweet, Charnowola and Chomiak* cases (211 F. 2d 118), and the subsequent denial of certiorari in those cases (348 U.S. 817). Neither contention has merit.

1. Even assuming *arguendo* that this case is governed on the merits by *Nowak and Maisenberg, supra* (which we deny, see *infra*, pp. 9-12), there would nonetheless be no basis for collateral attack under Rule 60(b)(6).⁴ For the record here shows the same "voluntary, deliberate, free, untrammelled choice of petitioner not to [proceed with his] appeal" that was held in *Ackermann v. United States*, 340 U.S. 193, 200, to preclude such collateral attack on the judgment.

The sole justification that petitioner offers for his failure to prosecute his appeal was that in view of the decision of the court of appeals in three other

⁴ Petitioner's attempt also to invoke subdivision (5) of Rule 60(b), providing that a judgment shall be set aside if "it is no longer equitable that the judgment should have prospective application," is likewise unavailing. The prospective application of this judgment stems wholly from the consequences that flow from the part of the judgment that has already been completed, *i.e.*, the vacation of the judgment of naturalization and the cancellation of the certificate of naturalization. As this Court said in *United States v. Swift and Co.*, 286 U.S. 106, 119, in recognizing the principle which subdivision (5) embodies, "The injunction, whether right or wrong, is not subject to impeachment in its application to the conditions that existed at its making. We are not at liberty to reverse under the guise of readjusting". Petitioner is seeking a reversal of the judgment of the district court, not a readjustment. That is not within the scope of subdivision (5).

cases raising the same issue, and the denial of certiorari in those cases by this Court, it would have been futile for him to have further litigated his case. "But since [petitioner] chose not to pursue the remedy which [he] had, we do not think [he] should now be allowed to justify [his] failure by saying [he] deemed any appeal futile." *Sunal v. Large*, 332 U.S. 174, 181; cf. *United States v. Tucker Truck Lines*, 344 U.S. 33, 36-37. This is not a case where actions by the government in fact prevented an appeal from a denaturalization order, as in *Klapprott v. United States*, 335 U.S. 601, modified, 336 U.S. 942, or *United States v. Karahalios*, 205 F. 2d 331 (C.A. 2). Indeed, there is not here even the claims of poverty or reliance upon advice of a government official, which the Court held in *Ackermann*, *supra*, to be an insufficient excuse for failure to appeal to justify collateral attack under Rule 60(b). This is simply a case where what once seemed to petitioner a losing cause now appears to him to have substantial merit if he can shatter the finality of the judgment.

Plainly, there are not here the "extraordinary circumstances" that can justify the use of collateral attack as a substitute for an appeal. As this Court stated in *Ackermann*, *supra*, p. 198:

* * * Petitioner made a considered choice not to appeal; apparently because he did not feel that an appeal would prove to be worth what he thought was a required sacrifice of his home.

⁵ The denial of certiorari by this Court in *Sweet, Charnowola* and *Chomiak* "imported no expression of opinion on the merits." *Sunal v. Large*, 332 U.S. 174, 181; *House v. Mayo*, 324 U.S. 42, 48.

His choice was a risk, but calculated and deliberate and such as follows a free choice. Petitioner cannot be relieved of such a choice because hindsight seems to indicate to him that his decision not to appeal was probably wrong, * * *. There must be an end to litigation some day, and free, calculated, deliberate choices are not to be relieved from.

In accord, see *Title v. United States*, 263 F. 2d 28, 31 (C.A. 9), certiorari denied, 359 U.S. 989; *United States v. Failla*, 164 F. Supp. 307 (D. N.J.); *Loucke v. United States*, 21 F.R.D. 305 (S.D. N.Y.); *Collins v. City of Wichita, Kansas*, 254 F. 2d 837 (C.A. 10); *Berryhill v. United States*, 199 F. 2d 217 (C.A. 6); 7 Moore; *Federal Practice* (2d ed. 1955), pp. 297-298; cf. *Sokal v. Large*, 332 U.S. 174.

2. In any event, even if petitioner could properly proceed under Rule 60(b), there would still be no warrant for disturbing the judgment of denaturalization. For this case is not, as petitioner asserts, "indistinguishable on any material issue" from *Nowak v. United States*, 356 U.S. 660 and *Maisenberg v. United States*, 356 U.S. 670 (Pet. 11-19). Both *Nowak* and *Maisenberg* had been naturalized under the Nationality Act of 1906, 34 Stat. 596, as amended,

* Petitioner's reliance (Pet. 23-24) upon *United States v. Ohio Power Co.*, 353 U.S. 98, is misplaced. That case involved only a construction by this Court of its own rules regarding the treatment of a petition for rehearing of a denial of certiorari. In no way did the decision touch on Rule 60(b), or consider or modify *Ackermann*. Similarly inapposite is *Grath v. Potash*, 199 F. 2d 166 (C.A.D.C.), which involved dissolution of an injunction against a deportation hearing which was no longer necessary because of a statutory change in the prescribed requirements for conducting such hearings.

45 Stat. 1512, which did not in terms preclude Communists from obtaining citizenship. The issue of illegal procurement in those cases, therefore, was not whether the defendants were members of a class Congress had decreed ineligible for citizenship, but whether attachment to the principles of the Constitution, a specific requirement of the 1906 Act, was inconsistent with their Communist Party membership. It was in that context that the Court dealt with the issue of illegality, finding that since the evidence did not clearly and convincingly establish that petitioners were aware of or endorsed the Party's illegal advocacy, lack of attachment had not been established. *Nowak* at 665-668; *Maisenberg* at 672-673.

In this case, however, petitioner was naturalized under the Nationality Act of 1940, 54 Stat. 1137. This Act, unlike the 1906 Act, specifically debarred from citizenship one who, at any time within the ten year period immediately preceding the filing of his petition for naturalization, was a member of, or affiliated with, an organization advocating or teaching the overthrow of the Government of the United States by force or violence (Section 305, *supra*, pp. 2-3). The legislative history of the 1940 Act makes plain that this exclusion was intended to apply to members of the Communist Party (see Hearings before the Committee on Immigration and Naturalization, House of Representatives, 76th Congress, 1st Sess., on H.R. 6127, superseded by H.R. 9980, to revise and codify the Nationality Laws of the United States, pp. 327-331). Moreover, Section 305 of the 1940 Act does

not require that the membership in the proscribed organization be with "knowledge" of its illicit purposes. The legislative history indicates (Congressional hearings, *supra*, p. 394) that Congress considered imposing such a requirement, but decided not to. Thus, Congress intended that membership in, or affiliation with, a proscribed organization would alone preclude naturalization, without proof that the alien personally advocated or endorsed the organization's illegal objectives.

As the district court found, petitioner's own testimony and testimony of other witnesses at his denaturalization trial established beyond doubt that petitioner was an active and meaningful member of the Communist Party from 1931 to at least 1938 (R. 52-54; see opinion of district court R. 23-27).⁷ Hence when his petition for naturalization was filed in 1944, he was not a member of a class eligible for naturalization under the 1940 Act. Accordingly, the district court was justified in cancelling the certificate as illegally procured.⁸ See *Sweet, et al. v. United States*, 211 F. 2d 118, 119-120 (C.A. 6), certiorari de-

⁷ Certainly, petitioner's membership in the Communist Party was meaningful within the standard laid down by this Court in deportation cases. See *Galean v. Press*, 347 U.S. 522; *Roroldt v. Perfetto*, 355 U.S. 115.

⁸ The observation in *Nowak* (356 U.S. at 663) that the 1940 Act "did not make membership or holding office in the Communist Party a ground for loss of citizenship", is not, as petitioner would read it, a finding that the 1940 Act did not make meaningful Communist Party membership a ground for exclusion from citizenship. On the contrary, this language merely reinforced the Court's finding that one naturalized under the 1906 Act could not be denaturalized on the ground of illegality solely because of Party affiliation.

nied, 348 U.S. 817; but cf. *United States v. Richmond*, Civil No. 31995, decided November 19, 1959 (N.D. Calif.).

A further distinction between this case and *Nowak* and *Maisenbergl* is that in the latter the sole evidence of fraud consisted of the negative responses to Question 28 on the Preliminary Forms for Petition for Naturalization.⁹ Here the evidence of fraud rested additionally on petitioner's direct concealment of Communist Party membership in his alien registration form, filed in December 1940 (see Statement, *supra*, p. 4).

In sum, petitioner has failed to show either the extraordinary circumstances required for reopening a final judgment of denaturalization under Rule 60(b), or that a reconsideration would now lead to a different result.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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FEBRUARY 1960.

⁹ Question asks (R. 17): "Are you a believer in anarchy?"

Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country?"

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 25

GUS POLITES,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF HABEAS CORPUS TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONER

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 25

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONER

Opinions Below

No printed opinion was filed by the Court of Appeals. Copy of the Court's order of affirmance appears on page 207 of the Record. The opinion of the District Court appears to be unreported. It is reproduced in the Record (Tr. 203).

Jurisdiction

The order of affirmance by the Court of Appeals was entered on October 16, 1959. The jurisdiction of this Court is invoked pursuant to the provisions of Title 28, U.S.C.A.

Sec. 1254. The Petition for Writ of Certiorari was granted on February 23, 1960.

Questions Presented

I.

Has Petitioner been deprived of his citizenship without due process of law by reason of the District Court's erroneous interpretation and application of the denaturalization law (8 U.S.C., Sec. 738(a)), where, as here, the proofs adduced by the Government and the findings made by the Trial Court, failed to meet the standards for denaturalization as subsequently clarified in this Court's decisions in *Nowak v. United States* and *Maisenberg v. United States*, 356 U.S. 660 and 670, 78 S. Ct. 955 and 960?

II.

Is the remedy provided in Rule 60(b) of the Federal Rules of Civil Procedure available to set aside the judgment of denaturalization in this case?

Statutes Involved

The Nationality Act of 1906 (34 Stat. 596, as amended) 8 U.S.C. (1934 ed.) 364 provided as follows:

Section 4, par. 4:

"No alien shall be admitted to citizenship unless (1) immediately preceding the date of his petition the alien has resided continuously within the United States for at least five years and within the county where the petitioner resided at the time of filing his petition for at least six months, (2) he has resided continuously within the United States from the date of his petition up to the time of his admission to citizenship, and (3)

during all the period referred to in this subdivision he has behaved as a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. * * * ”

Section 7.

“No person who disbelieves in or is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teaching such *disbelief in or opposition to organized government* * * * shall be naturalized or be made a citizen of the United States.” (Emphasis added.)

Section 15.

“It shall be the duty of the United States district attorneys for the respective districts . . . upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and cancelling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. * * * ”

The above Nationality Act of June 29, 1906 was superseded by the Nationality Act of 1940, 54 Stat. 1137 (Title 8, U.S.C. (1940 ed.), Sec. 700 *et seq.*). The pertinent portions of the 1940 Act are the following:

Section 705.

“No person shall hereafter be naturalized as a citizen of the United States—

(a) Who advises, advocates, or teaches, or who is a member of or affiliated with any organization, association, society, or group that advises, advocates, or teaches opposition to all organized government; or

(b) Who believes in, advises, advocates or teaches, or who is a member of or affiliated with any organization, association, society or group that believes in, advises, advocates, or teaches—(1) *the overthrow by force or violence of the Government of the United States, or of all forms of law.*” (Emphasis added.)

“The provisions of this section shall be applicable to any applicant for naturalization who at any time within a period of ten (10) years immediately preceding the filing of the petition for naturalization is, or has been, found to be within any of the clauses enumerated in this section, notwithstanding that at the time petition is filed, he may not be included in such classes.”

Section 707(a).

“No person, except as hereinafter provided in this Act, shall be naturalized unless such petitioner, . . . during all the periods (five (5) years) referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.”

Section 738 (a) provided essentially the same provision for cancellation of citizenship as that contained in Section 15 of the 1906 Act (*supra*, p. 3).

Rule 60(b)(5) and (6) of the Federal Rules of Civil Procedure provides in pertinent part:

"(b) On motion and upon such terms as are just, the Court may relieve a party * * * from a final judgment * * * for the following reasons: * * * (5) * * * it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment."

Statement of the Case

Petitioner, 60 years of age, is a native of Greece who has lived in this country continuously since he was sixteen (16) years old (Tr. 15).^{*} He is married to a native born American citizen and they have two children and two grandchildren. He has no criminal record. Until approximately a year ago, he was employed as a truck salesman of food products. Failing health now prevents his employment.

Petitioner's Naturalization

On April 6, 1942, Petitioner was naturalized by the Federal District Court at Detroit. At the time of his naturalization the Nationality Act of 1940 (*supra*, pp. 34) was in effect. Sections 705 and 707 of that Act made an alien ineligible for naturalization if within ten (10) years preceding the filing of his petition for naturalization, he had been a member of an organization advocating (1) opposition to organized government or (2) the violent overthrow of the Government. A petitioner for naturalization also was required to affirm his "attachment to the principles of the Constitution of the United States" and be a person of good moral character.

The form of Preliminary Petition for Naturalization (Govt. Exh. 2, Tr. 15-16) executed by Petitioner in 1940 contained the following as Question No. 28:

^{*} ("Tr —" refers to the Transcript in this Court.)

"Are you a believer in anarchy? * * * Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country?"

Petitioner answered "no" to both parts of this question.

The form of Petition for Naturalization (Govt. Exh. 1, Tr. 13), executed by Petitioner stated:

"(15), I am not, and have not been for the period of at least 10 years immediately preceding the date of this petition, an *anarchist*; nor a believer in the unlawful damage, injury, or destruction of property, or sabotage; nor a *disbeliever in or opposed to organized government*; nor a member of or affiliated with any organization or body of persons teaching *disbelief in or opposition to or opposition to organized government*." (Emphasis supplied.)

Petitioner's Denaturalization Proceedings

Ten years after Petitioner's naturalization and on June 16, 1952, the Government filed its Complaint to Cancel Citizenship (Tr. 1) in the Court below, seeking revocation of Petitioner's naturalization upon the grounds of fraud and illegal procurement. (Section 338(a) of the Nationality Act of 1940 (8 U.S.C. Sec. 738(a).) It charged that Petitioner's citizenship had been obtained by fraud in that he had been a member of the Communist Party from 1933 to 1941 and had concealed such membership at the time of his naturalization. It further charged that naturalization was illegally procured because Petitioner had been a member of the Communist Party within the ten (10) years preceding the filing of his petition for naturalization; that the Communist Party, during the period of his membership, taught and advocated the violent overthrow of the Gov-

ernment of the United States; that he "was familiar with and approved of the activities, aims, and teachings of the Communist Party"; and that he was, therefore, ineligible for citizenship and lacking in attachment to the Constitution.

Additionally, the Complaint alleged that in 1940, and prior to the filing of his petition for naturalization, Petitioner executed and filed an Alien Registration Form in which he falsely denied membership or activity in any "clubs, organizations or societies" and falsely stated that "within the past five (5) years he had not been affiliated with or active in any organizations devoted to furthering the political activities or public policy of any foreign government."

The Government's summary of the proofs upon which it relied to establish these charges, was filed at the request of the Trial Court (Tr. 199-203). Petitioner's summary of the entire testimony at the denaturalization trial (Tr. 193-197) was filed with his Rule 60(b) motion. A more detailed discussion of the evidence is contained in our Argument (*infra*, pp. 16-20).

Petitioner, called by the Government as a witness, testified that he was a member of the Communist Party from 1931 to 1938 but held no Party office (Tr. 38).

The Naturalization Examiner testified that at the time he interviewed Petitioner he did not ask Petitioner if he was or had been a member of the Communist Party (Trial Tr. pp. 476-484).

Other witnesses, former members of the Party, were called to identify Party publications and to testify concerning Petitioner's activities in the Party and related organizations. Their testimony is sufficiently set forth in the argument (*infra*, pp. 16-20).

The substance of Petitioner's defense was that *he* did not know the Communist Party as an organization advocating anarchy or the violent overthrow of the Government. He admittedly had been a rank and file member of the Communist Party during the depression years from 1931 to 1938 (Tr. 28), but he held no "position of responsibility" in the Party (Tr. 37); he read only "the papers and small pamphlets" and never had read any Party literature that advocated overthrow of the Government (Tr. 91-93). He personally never engaged in such advocacy (Tr. 95-97).

He further contended that in his naturalization proceeding he was never asked concerning the Communist Party nor membership in the Party and he did not understand any of the questions put to him, in either his alien registration form or his naturalization forms, as referring to the Party (Tr. 96-101). He left the Party in 1938 when its convention ruled aliens ineligible for membership (Tr. 101).

The Government contended (Tr. 23-24), and the Trial Court held (Tr. 176), that Petitioner's knowledge as to the character of the Party's teaching and advocacy was of no moment on the charge of illegality; that, assuming the proofs established illegal advocacy by the Party, his admission of membership in the Party made him a member of a class of persons ineligible for citizenship and, hence, the grant of citizenship to him was illegal. The Government further contended (Tr. 21-22), and the Trial Court held, that the charge of fraud was established by the proof that Petitioner did not disclose his prior Party membership in answering Question No. 28 on his Preliminary Petition and in his replies in his Alien Registration form (*supra*).

Accordingly, the opinion of the District Court cancelling Petitioner's citizenship held that Petitioner had obtained citizenship both fraudulently and illegally (Tr. 175).

Judgment of denaturalization was entered on August 20, 1953. Notice of Appeal was filed and the appeal was docketed in the Court of Appeals for the Sixth Circuit on October 15, 1953.

At the time of Petitioner's appeal, the Court of Appeals for the Sixth Circuit already had before it three (3) similar denaturalization appeals from the same District Court. These three (3) cases were *Sweet v. United States*, 106 F. Supp. 634; *Charnowola v. United States*, 109 F. Supp. 810 and *Chomiak v. United States*, 108 F. Supp. 527. Petitioner's counsel appeared and argued for the Appellant in each of them.

After Petitioner's appeal had been filed with the Court of Appeals but before his brief was due, the Court of Appeals entered judgments of affirmance in each of the above three (3) cases (211 F. 2d 118). The single *per curiam* opinion reiterated and approved the District Court's conclusion in each case but was silent on the issue of the appellant's knowledge in each case—the prime issue of the defense.

Petitions for Certiorari were filed in each of these three (3) cases and among the questions presented in each was the absence of any proof or finding that the appellant had knowledge of the claimed subversive character of the organization. (October Term, 1954 Nos. 73, 74 and 75.)

Following the filing of these Petitions for Certiorari, counsel for Petitioner here obtained from the Court of Appeals the following order extending the time for filing briefs in his appeal—

"to thirty (30) days from the date of final disposition by the Supreme Court of the United States of the Petitions for Certiorari (in the above three (3) cases)."

After the denial of certiorari by this Court in each of these three (3) cases (348 U.S. 817), counsel for Petitioner here stipulated for dismissal of Petitioner's appeal with prejudice.

Thereafter, and on January 31, 1955, deportation proceedings were instituted against Petitioner, culminating in a final order of the Board of Immigration Appeals, entered on January 6, 1956, and directing Petitioner's deportation to his native Greece because of his admitted prior membership in the Communist Party. (See Sec. 241(a)(6)(c) of the Immigration and Nationality Act, 8 U.S.C. Sec. 1251 (a)(6)(C).)

The Present Proceeding

On May 6, 1958, this Court decided *Nowak v. United States* and *Maisenberg v. United States*, 356 U.S. 660 and 670, 78 S. Ct. 955 and 960, reversing judgments of denaturalization theretofore rendered in each of these cases by the same District Judge who had heard and determined Petitioner's denaturalization.

Relying upon *Nowak* and *Maisenberg*, Petitioner, on August 6, 1958, filed his Motion under Rule 60(b)(5) and (6) of the Federal Rules of Civil Procedure (Tr. 188) to vacate the denaturalization judgment in his case.

The District Court denied the motion for two reasons: The Court apparently believed (Tr. 203) that Petitioner's case was distinguishable from *Nowak* and *Maisenberg* because the organizational proscription in the 1940 naturalization statute, under which Petitioner was naturalized (*supra*, p. 3) was different in language from the 1906 Act (*supra*, p. 2), which was before this Court, in *Nowak* and *Maisenberg*. And second, the District Court believed that in any event, it was precluded by this Court's decision in *Ackermann v. United States*, 340 U.S. 193 and the decision

of the Sixth Circuit in *Berryhill v. United States*, 199 F. 2d 217, from granting relief under Rule 60(b) based upon "a change in the judicial view of the applicable law." The reluctance of the District Court in reaching this decision is apparent from the following concluding portion of its opinion (Tr. 206).

"Ordinarily we would have granted petitioner's prayer, particularly under subsections (b)(5) of Rule 60, authorizing us to do so, if it is no longer equitable that the judgment should have prospective application. But in our opinion, our Court of Appeals specifically eliminates such holding, where the only reason for abandoning the appeal was because of the then status of the law under the 'controlling decisions'."

ARGUMENT

I.

Was the Cancellation of Petitioner's Citizenship Effected Under Circumstances Which Offend a Sense of Justice and to an Extent That Due Process Requires That Such Cancellation Be Set Aside?

1. Citizenship is rightly regarded as the most cherished possession of Americans. Many judicial injustices which otherwise might be tolerated in the interest of orderliness or an end to litigation, require a different approach and a different result where this most cherished possession is at stake.

Petitioner here, not only has been deprived of his citizenship, but he is imminently faced with banishment from the place he has called home for the past thirty-four (34) years and permanent separation from his family. His deportation can be justified under law only in the event the cancellation of his citizenship was lawful.

In *Rochim v. California*, 342 U.S. 165, 72 S. Ct. 205, this Court again formulated the basic tenet of substantive "due process" (at p. 173):

... Due process of law, as a historic and generative principle, precludes defining, and thereby confining, these standards of conduct more precisely than to say that convictions cannot be brought about by methods that offend a "sense of justice."

If, as this Court has rightfully observed, "justice must satisfy the appearance of justice" (*Offutt v. United States*, 348 U.S. 11, 14) then surely there is a denial of justice where, as here, the same District Judge upon identical charges and applying what was claimed by the Government to be identical legal principles to virtually identical proofs, arrives at identical judgments, one of which is later held by this Court to be erroneous and the other is permitted to stand and have prospective effect. Even if the unreversed judgment retains its presumed validity, there is no justification for allowing it to retain its prospective effect—especially where to do so subjects the losing party to the dire consequences here presented without any legally recognizable advantage to the successful party.

Nowak and *Maisenberg* were the first judgments of denaturalization, based upon a finding of Communist Party membership, to reach this Court following the 1943 decision in *Schneiderman v. United States*, 320 U.S. 118. In the intervening fifteen (15) years the policy of the Immigration Service and prevailing judicial decisions in this Court had resulted in a gradual whittling away by the lower courts of both the expressed and the implied majority holding in *Schneiderman* to the point, where, by 1954 attorneys for the Department of Justice, and the Immigration Service, relying upon language in *Dennis v. United States*, 341 U.S. 494, *Harisiades v. Shaughnessy*, 342 U.S. 580, 590, 592,

Carlson v. Landon, 342 U.S. 524, 535 and *American Communications v. Douds*, 339 U.S. 382, confidently argued that:

"In view of the strong dissent in the *Schneiderman* case (see dissent by C. J. Stone, with appendix of citations from Communist Party literature containing statements concerning force and violence, 320 U.S. 170-207), and statements by the Supreme Court since the decision in that case regarding the revolutionary character of the Communist Party, it is submitted that the *Schneiderman* decision today merely is authority for the rule that the Government in a denaturalization proceeding has the burden of proving its case by clear, unequivocal and convincing evidence." (Gov. Br. in Court of Appeals in *Chomiak* case, *supra*, p. 9.)

We do not undertake to catalogue here the long list of decisions in the lower Courts which accepted and followed the Government's restricted interpretation of *Schneiderman* prior to *Nowak*; and which held that mere membership in the Communist Party within the ten (10) year period made one ineligible for citizenship, regardless of his knowledge of the Party's alleged advocacy. Certainly, this was the rule in the Sixth Circuit (*Chomiak v. U. S.*, *supra*).

Our immediate concern here, however, is with the controlling significance of *Nowak* for purposes of demonstrating that in the context of the facts in Petitioner's case the District Court's cancellation of his citizenship not only was erroneous but it amounted to a denial of due process. Our presentation of this issue necessarily involves a comparison of Petitioner's case and the facts, issues and the law in *Nowak*. Accordingly, we rely in large part upon the legal arguments presented to this Court in the Brief for Petitioner in *Nowak* and the pertinent portions of the

argument there presented are herein incorporated by reference.

2. The complaint and the "affidavit of good cause" filed in Petitioner's case and in *Nowak* are practically indistinguishable except for names, times and places. The complaint in Petitioner's denaturalization proceeding (Tr. 1-3) charges him with having made the identical misrepresentations charged in the *Nowak* complaint (see pp. 117-118 of Petitioner's Brief in *Nowak* in this Court), notwithstanding *Nowak* was naturalized under the 1906 Act whereas the 1940 Act was applicable in Petitioner's case. As we have seen, the 1906 Act refers to persons and organizations teaching *disbelief in organized government*, while the 1940 Act extended the proscription to persons who teach and advocate *the violent overthrow of the Government*. The distinction in the reach of these two statutes is pointed up in Petitioner's Brief in *Nowak*, pages 28-37.

The Government, of course, might have charged in its Complaint that the Petitioner made a misrepresentation based upon sub-section 705(b) of the 1940 Act (violent overthrow of the Government) rather than 705(a) (belief in anarchy) (*supra*, p. 4); thus invoking the specific amendatory language contained in the 1940 Act. But it did not do this; instead, it elected to charge Petitioner in the language of the 1906 Act. Thus, the claimed basis for the charge of illegality in both *Polites* and *Nowak* cases is the same and follows the literal language of the 1906 Act. Therefore, the Trial Court in seeking to distinguish Petitioner's case on the basis of the amended language of the 1940 Act is doing precisely what this Court said in *Schneiderman* (320 U.S. at 160) could not be done; it is going "outside the scope of the complaint" and this amounts to a "conviction upon a charge not made." *De Jonge v. Oregon*, 299 U.S. 353, 362.

The basis for the Government's claim—and the Trial Court's finding—of fraud in Petitioner's case also was the same as in *Nowak*. In each of these cases, *Polites* and *Nowak*, the Government conceded or the Trial Court found that the applicant was never specifically asked concerning his alleged Communist Party membership; hence the charge of fraud in both cases was grounded upon the applicant's negative answer to Question No. 28 which was the same in each case (Tr. 15-16; and pp. 129-130 of Petitioner's Brief in *Nowak*, in this Court).

3. The proofs adduced by the Government to support its complaint against Petitioner likewise followed the identical pattern in form and content as in *Nowak*. In each case, there was introduced by stipulation a list of the same fourteen (14) Marxist-Leninist books or pamphlets relied upon by the Government as showing the Party's advocacy of violence. (See Tr. 178-179 and also Petitioner's Brief in *Nowak*, pp. 147-148.) Neither in this case nor in *Nowak* was there any evidence that the defendant had read or was familiar in any way with these writings or the Government's excerpts from these books (Tr. 92). Additionally, in each case reliance was had by the Government upon the testimony of disgruntled former Party members or paid informers concerning what they heard or observed concerning the Party and its advocacy at places and times when the defendant may not have been present (Tr. 141, 199-200). And in each case the principal Government witness was one, Nowell, and the period covered was the Thirties.

The nature and the insufficiency of such testimony in the *Nowak* case is apparent from the opinion of this Court in that case (356 U.S. at pp. 665-667) and need not be repeated here. It is enough to note here that after a review of all of the above evidence in *Nowak* this Court said (p. 665):

" . . . But even assuming that the evidence of the illegal advocacy of the Party was sufficient . . . we nevertheless hold that the Government cannot prevail on this record. For we are of the opinion that it has not been established that Nowak knew of the Party's illegal advocacy."

When the evidence in *Nowak* as it relates to the question of the petitioner's knowledge, is compared with the testimony here, as set forth in the Government's own summary (Tr. 199-203), it is obvious that the Government's case against this Petitioner falls far short of the Government's effort in *Nowak*. For example, those portions of the Government's Summary (Tr. 201) which purport to set forth the totality of its proof of Petitioner's advocacy or his knowledge of the claimed illegal teaching and advocacy by the Party, ascribes only the following to this Petitioner:

The witness Syrakis testified (Tr. 124-127) concerning the Petitioner as follows:

"Q. Yes. And what were the words he used there?

A. He used the words to—how to organize the Greek Workers, and all the workers of the land, to better themselves and extend the existence of the class struggle, and gradually strengthen themselves and gradually overthrow the present system by force and violence.

Q. By 'present system', what do you mean?

(fol. 168) A. The—

Mr. Goodman (Interposing): Just a moment.

A. The existing government of the United States.

Q. Well, did Mr.—what were the exact words Mr. Polites used?

A. The exact words, was the strengthening of the working class, to fight, to cause trouble and gradually strengthen themselves in order to overthrow the present government by force and violence.

Q. Did Mr. Polites ever say how he or the Party planned to do this?

A. Yes.

Q. You were present?

A. Yes.

Q. What did he say?

Q. What was his statement? What did he say?

A. He said the way to organize, agitate—agitate the workers, organize them, in order to follow up when the time comes to overthrow the government by force and violence.

Q. Did he ever say in your presence the methods that he was going to use?

A. Well, the only method he said was by force. He said (fol. 172) that we, the workers, would never be able to get in the Government by vote.

Mr. Goodmar: What is that?

The Court: By vote. He says it wouldn't be possible to arrive at the desired goal, or something to that effect, by vote. It would have to be by force and violence. I think that is what he said; if I am wrong, correct me.

By Mr. Hamborsky:

Q. That is what you said, wasn't it?

A. Yes.

The Court: He said 'Yes'.

By Mr. Hamborsky:

Q. Did he ever—that is, Mr. Polites, did he ever mention in your presence how he would organize these people, either the Communist Party members or the citizens?

A. Well, the Communist Party members has to be— had to be the leaders, the directors, among the public, to organize the different groups, the societies and unions and different other mass organizations, in order to direct them. The Party members was supposed to be the directors or the leaders of that movement."

The witness Nowell testified (Tr. 165-166):

Q. Now, were you ever present at a meeting with the defendant Guss Polites when he spoke as a functionary of the Communist Party?

A. Yes, I have been.

Q. Where and when?

A. It was at the Greek Workers Club on several occasions during 1933 and '34.

Q. What did he say?

A. Well, I was representative from the District Bureau, and the subject largely was that of Marxism-Leninism theory, that is, to spur on our educational program. Also local issues were taken up and the application of Leninism to the concrete situation. My best recollection is that Polites took the floor and spoke as to the objectives of the program of the Communist Party, mentioning local campaigns and their progress at the time.

Mr. Goodman: I can't hear this witness.

(fol. 265) The Court: Mentioning what?

- A. Local campaigns that were in progress at the time. Among other things, in detail—

By Mr. Hamborsky (Interposing):

Q. Speak up.

The Court: Keep your voice up, please. Does that advocate the overthrow of this government by force and violence?

Mr. Goodman: Did he?

- A. He has, in speeches, advocated the overthrow of the government by force and violence, during my presence.

Mr. Goodman: Yes.

The Court: I didn't hear what he said.

Mr. Goodman: I didn't hear the last part, either.

The Court: He says he has advocated —

Mr. Goodman (Interposing): Read the last answer, please.

(Last answer read by the Reporter.)

- A. Better 'during'—'in my presence'. Also continuing my answer along this line, I, as Educational Director, was charged with evaluating the political and ideological development of Communist Party members, to select and train them in the ideology and political policies of the Communist Party, and on many occasions, I have talked in groups and privately with Polites with respect to his political (fol. 266) beliefs, his adherence to the line and program and ultimate objectives of the Communist Party and Communist International, and he was always fully in support and an advocate of the firm objectives of the Communist Party of the United States.

By Mr. Hamborsky:

Q. Now, do you know if any time during this period the defendant, Guss Polites was the director for Agitation and Propaganda?

A. I am not so sure. I am not sure I know he was. I believe he was during the latter part of 1934 or first part of 1935. He was some functionary in his unit. I can't be sure just what it was."

Here we have, then, the total of the alleged illegal advocacy attributed by any witness to this Petitioner or to anyone else in Petitioner's presence. These quotations and Petitioner's insignificant role in the Party should be compared with the quotations attributed to *Nowak* and referred to in the opinion of this Court in *Nowak*, page 667 (Note 4). It is clear, we think, that they fail to show either illegal advocacy or knowledge of such illegal advocacy by this Petitioner. And, therefore, from a factual comparison of the charges and the proofs in *Nowak* and in Petitioner's case, it follows that the Government failed to prove its case for cancellation of Petitioner's citizenship.

4. The opinion of the District Court, in denying Petitioner's motion under Rule 60(b) (Tr. 203), emphasizes the difference in the language of the belief sections of the 1906 Act and the 1940 Act. The opinion suggests (Tr. 205), that knowledge by the applicant of the Party's illegal advocacy is now required to cancel citizenship obtained under the 1906 Act, but is not required where citizenship was obtained under the 1940 Act. The reasoning appears to be that the 1940 Act contained new language which was not before this Court and hence, was not interpreted by this Court in *Nowak*. This, we submit, is a restricted reading of this Court's decision in *Nowak*.

As we have seen (*supra*, p. 2), the 1906 Act expressly barred citizenship to *disbelievers in organized government*:

and the 1940 Act added to this proscription an expressed reference to persons and organizations who *teach and advocate the violent overthrow of the Government* (*supra*, p. 4). What is important, however, is not the difference in the language of the two statutes. Rather, the controlling issue is whether the 1940 amendment was intended by Congress to eliminate the requirement of knowledge.

The legislative background for both Acts is discussed at pages 27-37 of Petitioner's Brief in *Nowak*. In neither Act is there an expressed requirement of knowledge. But in *Nowak*, as it previously had done in *Schneiderman* (320 U.S. at 154, 158), this Court deemed it essential to the preservation of "freedom of thought" and to forestall guilt by association, to interpret the 1906 Act as requiring "clear, convincing and unequivocal" proof of knowledge on the part of the defendant of the claimed illegal advocacy. Congress, with full awareness of this interpretation, did not change this holding when, in 1940, it extended these belief requirements. The clear implication of *Nowak* therefore, is that knowledge is required under both Acts.*

Indeed, the Government contended in *Nowak* (Gov't Brief, pp. 37-39), as it has consistently contended in recent years, that the amended belief provisions of the 1940 Act merely made explicit what was already implicit in the previous 1906 Act, i.e. that the 1906 Act itself necessarily barred "advocates of violent overthrow"; and therefore Communists, irrespective of their personal knowledge, were barred because mere membership in that Party was incompatible with attachment to the Constitution and good moral character. Thus, the Government viewed the 1940 Act as indistinguishable from the 1906 Act in this

* In the Immigration and Nationality Act of 1952 (8 U.S.C. 1451(a)) Congress expressly wrote in a requirement of proof of knowledge by providing for cancellation only in cases of "concealment" or "wilful misrepresentation."

respect. And in its brief in *Nowak* (pp. 37-39) it argued that the 1940 addition to the belief qualifications was "an irrelevant factor" since "attachment" had been a part of the naturalization laws since 1903 and was broad enough without more specific enumeration.

The correctness of this theory appears to have been either accepted or assumed by this Court, for purposes of its decision, when it said in *Nowak*:

" * * * But this proof (of membership without a showing of awareness of the illegal aspects of the Party's program (*Nowak*, supra, at p. 666) does not suffice to make out the Government's case, for Congress in the Nationality Act of 1940 did not make membership or holding office in the Communist Party a ground for loss of citizenship (*Nowak*, supra, at p. 668)." (Emphasis supplied.)

In other words, *Nowak* stands for the two basic propositions: First, denaturalization because of fraud, may not be decreed under Sec. 338a of the Nationality Act of 1940 in any case where the claim of fraud is predicated solely upon the failure of the petitioner to disclose his past Communist Party membership in answer to Question 28 on the Preliminary Naturalization form used in the *Nowak* case and in Petitioner's case; and second, denaturalization may not be decreed because of illegal procurement in any case where the claimed lack of attachment is based solely upon proof of mere membership or officership in the Communist Party without (a) showing personal advocacy or, (b) proof of illegal advocacy by that organization and the applicant's awareness of such advocacy.

Applying each of these propositions to Petitioner's denaturalization proceeding, it is obvious that he has been

deprived of his citizenship because of an erroneous interpretation and application of the denaturalization law.

5. The opinion of the Trial Court also attempts a distinction from *Nowak* by pointing to one issue raised by the complaint in Petitioner's case but not before the Courts in either *Nowak* or *Maisenberg*. Thus, the opinion refers to the fact that in his 1940 Alien Registration form (Gov. Exh. 3), Petitioner had stated as follows:

"10. I am, or have been within the past five (5) years, or intend to be engaged in the following activities:

In addition to other information, list memberships or activities in clubs, organizations, or societies * * * (None).

15. Within the past five (5) years, I have not been affiliated with or active in (a member of, official of, a worker for), organizations, devoted in whole or in part to influencing or furthering the political activities, public relations or public policy of a foreign government."

And the opinion asserts that Petitioner "failed to tell the truth in either instance."

Whether the Trial Court is suggesting this as an additional support for its finding of fraud, is not clear. But it is not without significance that in its opinion on Petitioner's denaturalization (Tr. 175), the Court made no mention of this Alien Registration form and the sole evidence in the record on this issue is the form itself. It would appear that this claim was abandoned by the Government.

In any event, however, the questions and answers in Petitioner's Alien Registration Form, if relevant and material to the issues presented in his denaturalization case,* must be tested by the same standards of definiteness applied by this Court to the questionnaire in *Nowak*. And tested by these standards it is apparent that the questions and answers in this form do not warrant the Trial Court's conclusions of falsity.

The conclusion follows, therefore, that since Petitioner's case is indistinguishable in fact and in law from the Government's charges and the issues determined in *Nowak*, and since his case was not decided in accordance with the principles of law as clarified by this Court in *Nowak* the judgment of denaturalization against the Petitioner was erroneous.

II.

Is the Remedy Provided in Rule 60(b) of the Federal Rules of Civil Procedure Available to This Petitioner?

1. It appears, we think, from the concluding paragraph of the Trial Court's opinion denying Petitioner's motion, that the real basis for the Court's decision was not an adverse exercise of discretion under the Rule; nor a belief that the law was properly applied in Petitioner's denaturalization; but rather, that Rule 60(b) was inapplicable, as a matter of law, to the situation presented here. Particular reliance is placed by the Trial Court on this Court's decision in *Ackermann v. United States*, 340 U.S. 193 and the opinion of the Court of Appeals for the Sixth Circuit in *Berryhill v. United States*, 199 F. 2d 217 (1952).

* Appellant's motion to strike from the Complaint in his denaturalization proceeding all references to his Alien Registration as irrelevant and immaterial was denied. (Tr. 28-29)

Rule 60(b) in its pertinent part states:

"Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: * * * (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order, or proceeding was entered or taken * * *"

Clause (6) of this Rule, "for all reasons except the five particularly specified (in the Rule) vests power in Courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice." *Klaproth v. United States*, 335 U.S. 601 at 615. In this case, both inequity and injustice will flow from the retention and the prospective application of the denaturalization judgment.

In the first place consideration must be given to the nature of a judgment of denaturalization and the consequences it entails. If a denaturalization judgment is annulled, there is no disturbance of property rights, no adverse adjustment of the status quo, no chance of injuring third persons. The Government is not harmed by a reacquisition of citizenship by one who should not have been deprived of it. If anything, the Government, as the body politic, would benefit by the correction of the injustice done one of its citizens.

Denaturalization is "the total destruction of the individual's status in organized society. It is a form of punishment more primitive than torture, for it destroys for the individual the political existence that was centuries in development." *Trop v. Dulles*, 356 U.S. 86, 101. If an erroneous denaturalization judgment is allowed to stand, it may, and in this case will result in deportation to the added injury of the individual and his family. And this is so here because the alleged basis for denaturalization is also the ground for deportation (see, *supra*, p. 10). Petitioner's deportation will be unjust because predicated on an erroneous denaturalization judgment, but it will be unassailable on that account if the denaturalization judgment is not set aside in this proceeding. In the present case, Petitioner has lived in the United States for 44 years, since he was 16 years old. If the erroneous denaturalization judgment is allowed to stand, he will be exiled. It seems incredible that the Government, having inflicted on him the injury of an erroneous cancellation of his citizenship, should be able to utilize the judgment further so as to ruin his life completely.

2. The crux of the Trial Court's decision, affirmed below, is the following:

" * * * Therefore, since Petitioner abandoned his appeal, as he states, 'because of the controlling decisions' (in *Chomiak, Sweet and Charnowola*) we have absolutely no alternative but to follow the *Ackerman* decision coupled with the Sixth Circuit Court of Appeals' statement in *Berryhill v. United States*, 199 F. 2d 217 (1952) which refutes petitioner's reasoning by saying:

'It appears to be the settled rule that a change in the judicial view of the applicable law, after a final

judgment, is not a basis for vacating a judgment entered before announcement of the change.' "

Ackermann v. United States, 340 U.S. 193, denied relief under clause (6) of Rule 60(b), not because the denaturalization judgment was not appealed, but because in the opinion of a majority of this Court the reasons advanced for failing to appeal—financial hardship and reliance upon poor advice from an Immigration Service employee—were deemed insufficient to overcome the view that a free and deliberate election had been made by petitioner not to appeal. Even so Justices Black, Frankfurter and Douglas dissented, observing that the decision "neutralizes the humane spirit of the Rule and thereby frustrates its purpose" (at 202). Justice Clark did not participate.

Ackermann, therefore, does not dictate a hard and fast principle to be applied indiscriminately whenever an appeal is not taken or is subsequently withdrawn. Instead, it requires an appraisal of the circumstances in each case; an exercise of discretion. In Petitioner's case the Trial Court declined to exercise any discretion because it believed that *Ackermann* precluded it from doing so. At most, *Ackermann* stands for the proposition that Rule 60(b)(6) may not be invoked to vacate an erroneous judgment, which might have been reversed by appeal but for the fact that the aggrieved party "slept on his rights" and deliberately elected not to appeal in a situation where he was not prevented from doing so and where it could not be said that an appeal would have been hopeless. It certainly does not mean that a failure to appeal, or the dismissal of an appeal by stipulation, prevents the Trial Court from exercising discretion under Rule 60(b). Cf. *McGrath v. Potash*, 199 F. 2d 166, discussed herein at page 28.

In the instant case it cannot be said that Petitioner "made a considered choice not to appeal" (*Ackermann*, at p. 198). As pointed out above (pp. 9-11) Petitioner here not only perfected his appeal in the face of the appellate Court's outstanding adverse decisions in *Chomiak*, *Sweet* and *Charnowola*, *supra*, but requested and was granted leave to delay filing his brief pending this Court's action in those three cases.

Reference to the Petitions for Certiorari in these three (3) cases (October Term, 1954, Nos. 73, 74 and 75) will suffice to show that every conceivable issue involved in Petitioner's case was raised and adjudicated adversely by the appellate Court in these three (3) appeals.* Indeed, throughout the trial of Petitioner's case, both the Government and the District Court made frequent references to these three (3) cases as having settled the law of Petitioner's case (Trial Tr. at pp. 350, 384, 425-427, 485, 488, 494 and 498). And not until this Court, by its denial of certiorari in each of these three (3) cases (348 U.S. 817), had indicated an unreadiness to consider the legal arguments which Petitioner's appeal presented, did he finally stipulate for dismissal of his appeal.

Surely, under those circumstances, it cannot be said here, as in *Ackermann* that no justifiable reason is shown for his failure to pursue his remedy by appeal or that his failure to appeal "was a free and deliberate choice."

In *McGrath v. Potash*, 199 F. 2d 166, the Government itself was confronted with precisely the same legal question now raised by this Petitioner and successfully pursued the same course of action which it now seeks to deny to this Petitioner. Deportation proceedings had been in-

* *Nowak* and *Maisenberg* followed *United States v. Zucca*, 351 U.S. 91, and raised for the first time in this Court the sufficiency of the denaturalization affidavit.

stituted against Potash. He sought an injunction, contending that his deportation hearing was not being conducted in conformity with the Administrative Procedures Act. The District Court granted a permanent injunction and the Government appealed. While the appeal was pending, the same issue was decided by this Court in another case and its decision was in accord with the District Court's decision in the *Potash* case. Accordingly, the Government's appeal in the *Potash* case was dismissed by stipulation. Later, Congress amended the law so as to make the Administrative Procedures Act inapplicable to deportation hearings. The Government then moved under Rule 60(b)(6) to vacate the above-mentioned final judgment. The District Court denied the motion and the Court of Appeals reversed, holding that the subsequent change in the applicable law removed the basis for giving any prospective effect to the prior judgment.

Berryhill v. United States, 199 F. 2d 217 (C.A. 6, 1952) relied upon by the District Court is clearly distinguishable on its facts. Conflicting claims against the Veterans Administration for the proceeds of a National Service insurance policy had been judicially determined adversely to the plaintiff, a foster sister of the deceased. Later, and upon the strength of a subsequent decision in this Court (*Woodward v. U.S.*, 341 U.S. 112, 71 S. Ct. 605) holding a foster sister to be an eligible beneficiary and resolving a conflict which existed on this question in the Third and the Eighth Courts of Appeal, plaintiff sought by motion to set aside the previous judgment, thus compelling the Veterans Administration to pay the claim twice. The Court of Appeals for the Sixth Circuit affirmed the denial of plaintiff's motion for the reason that—

“We are of the opinion that the judgment in this case was not ‘based’ upon a prior judgment which has been reversed or otherwise vacated within the mean-

ing of Sub-section 5 of Rule 60(b). The ruling of the Court of Appeals for the 8th Circuit in *Woodward v. U.S.*, supra, was not controlling upon the District Judge, sitting in a different Circuit and the record does not show that the District Judge 'based' his ruling upon the decision in that case."

The Court also concluded that plaintiff's motion "states no reason for not taking an appeal" and the failure to appeal "was a free and deliberate choice." It was in this context—involving a hardship to the Government and the intervention of rights of a third party—that the Court made the observation quoted by the Trial Court here. The issue presented by the plaintiff's claim had never been determined in the Sixth Circuit; hence, it hardly could be said that there had been "a change in the judicial view of the applicable law."

Parenthetically, it is observed here that the minimum relief which Petitioner seeks is not necessarily a vacation of the denaturalization judgment; but rather relief from the prospective application and future operation of that judgment. In this respect Petitioner's case is peculiarly dissimilar from *Berryhill* and other cases in which relief from a money judgment is sought under Rule 60(b)* and is more in accord with the historical purpose that Rule was intended to achieve. See Moore's Fed. Prac., 2 ed., Vol. 7, pages 283-303.

But there is a more basic reason why the above quotation from *Berryhill* cannot be accepted as an unvarying rule to be applied to all final judgments regardless of its

* Cf. *Block v. Thousand Friend, et al.*, 170 F. 2d 428, where the Second Circuit held that relief from a money judgment should be granted under the Rule notwithstanding no appeal had been taken, where the District Court had approved the local O.P.A. order for repayment of rent and subsequently the Washington Office of O.P.A. had overruled the local office.

consequences in a particular case. This reason finds expression, not only in what this Court recently said in *United States v. Ohio Power Co.*, 353 U.S. 98, 77 S. Ct. 652 (1958), but in what the Court did. That case involved a suit by the power company to recover taxes paid under protest. The Court of Claims allowed recovery and the Government's petition for certiorari was denied. Thereafter, two (2) petitions for rehearing also were denied by this Court. Meanwhile, the Court of Claims reiterated its holding in a second similar case and more than one (1) year later, a different result was reached by the Court of Appeals for the Second Circuit in another similar case. This Court granted certiorari in both of these two latter cases and, at the same time, *sua sponte*, set aside its six (6) months old denial of rehearing in the *Ohio Power* case in order that the case "might be disposed of consistently with the companion cases" in which certiorari was granted.

In "the companion cases" the Government's position was sustained; and this Court thereupon reconsidered the Government's second petition for rehearing in the *Ohio Power* case, vacated the order denying certiorari, granted the petition for certiorari, and reversed the judgment below which had been adverse to the Government's contention. All of this was accomplished by the Court without benefit of a Rule 60(b). The justification given by the Court has peculiar application to this Petitioner:

"We have consistently ruled that the interest in finality of litigation must yield where the interests of justice would make unfair the application of our rules. This policy finds expression in the manner in which we have exercised our power over our own judgments, both in civil and criminal cases."

Among the cases cited by the Court as reflecting this policy, was *Remmer v. United States*, 348 U.S. 901, where,

following denial of review by this Court, a different result was reached by the Court in later companion cases involving the same issues. This Court then granted a delayed petition for rehearing in *Remmer*, restored the case to the docket and then remanded it to the Court of Appeals "in order that the Court on the whole record may reconsider the case in the light of our recent decisions * * *."

At a minimum, the same disposition made by this Court in *Ohio Power* should be made by this Court on behalf of this Petitioner.

Finally, mention should be made of *Title v. United States* (C.A. 9th, decided January 6, 1959, cert. den. June 15, 1959). The Petitioner there sought relief by motion under Rule 60(b) from a judgment of denaturalization. The Complaint filed by the Government in the denaturalization proceeding on October 21, 1954 did not include the affidavit of good cause, but Title's motion to dismiss the complaint for this reason, was denied by the District Court and on July 14, 1955, judgment of denaturalization was entered. Title filed an appeal, on September 8, 1955, which was later dismissed by the Court of Appeals on February 27, 1956 "for failure of appellant to prosecute the appeal."

Meanwhile, on October 10, 1955, and before Title's appeal had been dismissed, this Court granted certiorari in *United States v. Zucca*, 350 U.S. 817, and on April 30, 1956, about two months after dismissal of Title's appeal, this Court decided in *United States v. Zucca*, 351 U.S. 91, that the affidavit of good cause "must be filed with the complaint when the (denaturalization) proceedings are instituted. Two years later, in the *Matles*, *Lucchese* and *Costello* cases (356 U.S. 256), this holding was reiterated.

—It was not until two years after the issue had been determined in *Zucca* and on May 22, 1958, that Title moved

to set aside and vacate his denaturalization judgment "on the ground that the judgment was void in that the required affidavit showing good cause was never filed and that it was no longer equitable that the judgment should have prospective application." The order denying his motion was affirmed, the Court of Appeals saying:

" * * * Were Title's appeal presently before us, we would reverse the judgment of denaturalization rendered against him by the District Court. But that appeal he has voluntarily failed to prosecute. He is in the same status as any other individual who fails to protect fully his valid legal rights, by neglecting to perfect his appeal.

* * * * *

" * * * Rule 60(b) was not intended to provide relief for error on the part of the Court or to afford a substitute for appeal." (Citing *Ackermann* and *Berryhill*, *supra*.)

This Court's denial of certiorari in *Title* is not in conflict with Petitioner's position here. The pertinent difference between the two, for purposes of Rule 60(b) relief, is that in *Title* (as in *Ackermann* and *Berryhill*, *supra*) the Petitioner, in a situation where he was not prevented from doing so and where it could not be said that an appeal would have been hopeless, nevertheless, made a free and deliberate choice not to perfect his appeal. *Zucca* was pending in this Court at the very time *Title's* appeal was pending in the Court of Appeals. But unlike the Petitioner here, *Title* neglected to preserve his appeal pending the outcome in *Zucca*. Moreover, he neglected to move within a reasonable time after *Zucca* was decided in this Court, and the record disclosed no reason for his neglect.

Conclusion

The judgment below should be reversed

Respectfully submitted,

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U.S. SUPREME COURT
FILED
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JAMES R. BROWNING, Clerk

No. 25

In the Supreme Court of the United States

OCTOBER TERM, 1960

GUS POLITES, PETITIONER

v.

UNITED STATES OF AMERICA

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT**

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 25

GUS POLITES, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals is reported at 272 F. 2d 709. The opinion of the district court (R. 203-206) is reported at 24 F.R.D. 401. The earlier opinion of the district court revoking petitioner's citizenship (R. 175-186) is reported at 127 F. Supp. 768.

JURISDICTION

The judgment of the court of appeals was entered on October 16, 1959 (R. 207). The petition for a writ of certiorari was filed on January 5, 1960, and granted on February 23, 1960 (R. 207; 361 U.S. 958). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, almost five years after petitioner agreed by stipulation to a dismissal with prejudice of his appeal from a judgment of denaturalization, he may collaterally attack that judgment under Rule 60(b) of the Federal Rules of Civil Procedure, on the ground that subsequent decisions of this Court have established that his denaturalization was erroneous.

2. Whether the judgment of denaturalization entered against petitioner was, in fact, erroneous.

STATUTE AND RULE INVOLVED

Section 305 of the Nationality Act of October 14, 1940, 54 Stat. 1137, 1141, provided in pertinent part:

No person shall hereafter be naturalized as a citizen of the United States—

* * * * *

(b) Who believes in, advises, advocates, or teaches, or who is a member of or affiliated with any organization, association, society, or group that believes in, advises, advocates, or teaches—

: (1) the overthrow by force or violence of the Government of the United States or of all forms of law; * * *

* * * * *

The provisions of this section shall be applicable to any applicant for naturalization who at any time within a period of ten years immediately preceding the filing of the petition for naturalization is, or has been, found to be within any of the clauses enumerated in this section, notwithstanding that at the time petition is filed he may not be included in such classes.

Section 338(a) of the Nationality Act of 1940, 54 Stat. 1158, provided:

It shall be the duty of the United State district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings * * * for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured.

Rule 60(b) of the Federal Rules of Civil Procedure provides, in pertinent part:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment,

order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. * * *

STATEMENT

Petitioner, who was born in Greece and entered this country in 1916, was naturalized in the United States District Court for the Eastern District of Michigan on April 6, 1942, under the provisions of the Nationality Act of 1940 (R. 1-2, 6, 175). On June 16, 1952, the government filed a complaint seeking cancellation of the certificate of naturalization under Section 338(a) of the 1940 Act, *supra*, on the grounds of fraud and illegal procurement (R. 1-5). An affidavit of good cause detailing these charges was filed with the complaint (R. 5-9).

As to fraud, the complaint charged that, although petitioner had been a member of the Communist Party from 1933 to at least 1941 and knew and approved of its activities and aims, he swore in the proceedings leading up to his naturalization, *inter alia*, (1) that he had not within the previous five years belonged to, been affiliated with, or active in any organizations devoted in whole or in part to influencing or furthering the political activities of a foreign government,¹ (2) that he believed in the form of government of the

¹ These answers were given by petitioner on December 16, 1940, in registering as an alien pursuant to Title III of the Alien Registration Act of 1940, 54 Stat. 670, 673-676 (R. 2, 30-31).

United States,² and (3) that he was attached to and would defend the principles of the Constitution of the United States³ (R. 1-3). Petitioner, the government charged, knowingly swore falsely in giving these answers in order to prevent a full and proper investigation of his qualifications for citizenship, and to procure a certificate of naturalization in violation of law (R. 3-4).

The charge of illegal procurement was that petitioner was not a person of good moral character for the requisite statutory period preceding his application for naturalization, was not attached to the principles of the Constitution, and was not eligible for naturalization because, within ten years immediately preceding his filing of a petition for naturalization, he had been a member of an organization which advocated the overthrow by force and violence of the Government of the United States (R. 4-5).

At the denaturalization proceeding in the district court, petitioner testified that he was a member of the Communist Party of the United States from "around" 1931 until 1938 (R. 35-36), during which time he attended "closed meetings"⁴ about once a month (R.

² This answer was given on October 6, 1941, to a Naturalization Examiner in response to questions on the Preliminary Form for Petition for Naturalization (R. 15-16).

³ This statement was made in the Petition for Naturalization filed on October 6, 1941, and in the oath of allegiance to the United States taken by petitioner on April 6, 1942 (R. 1-3, 13-14).

⁴ A meeting that is closed to everyone but a member of the Communist Party (R. 41).

35-36, 41-43). He also stated that he was the Secretary of the Greek Fraction⁵ of the Communist Party in Detroit in 1934 or 1935 (R. 48-49, 60-61), and, in that capacity, conducted meetings and made reports to the National Office of the Greek Fraction in New York (R. 64-65, 67, 68); that he was a member of the Bureau of the Fraction for a somewhat longer period of time (R. 115-116); and that he left the Communist Party in 1938 not because of any difference with its aims and objectives, but because of the receipt of a directive from the Party that all aliens cease membership. He further testified that he believed in the aims and objectives of the Party when he was naturalized in 1942 (R. 108-109).

Leo Syrakis testified that he was introduced into the Communist movement by petitioner in 1935, and became a member of the Party that year; that petitioner was the Agitprop Director⁶ of the unit Syrakis joined, and General Secretary of the Greek Fraction in Michigan—i.e., the director of all Greek activities in the Communist Party of Michigan (R. 120-122, 128-129). The witness further recalled that, at numerous closed meetings in 1935, petitioner spoke of the necessity of overthrow of the government by force and violence, pointing out that the workers would never be able to get control of the government by vote (R. 125-127, 132; see also R. 123-124).

⁵ A "fraction" is "a group of members of the Communist Party working within a non-Communist organization to carry out the policies of the Communist Party" (R. 161).

⁶ As Syrakis explained it, the duty of the Agitprop Director was to educate the members of the unit in Communism (R. 122).

William Nowell testified that between 1931 and 1936 he attended closed Communist meetings with petitioner in Detroit and that to his knowledge petitioner was a "high functionary" of the Party and attended functionary meetings. He also stated that he heard petitioner advocate the overthrow of the government by force and violence at various closed Party meetings, between 1931 and 1936 (R. 163-171).

On August 20, 1953, the district court issued a decree revoking the order of April 6, 1942, which had admitted petitioner to citizenship, cancelling the certificate of naturalization, and restraining petitioner from claiming any rights under the certificate (R. 186-187). In its opinion filed on August 13, 1953 (R. 175-186), the court, after reviewing the evidence, found that the government had shown clearly and convincingly that the Communist Party, of which petitioner had been a member within ten years prior to his naturalization, advocated the overthrow of the government of the United States by force and violence (R. 176-180); that petitioner "was guilty of fraud in securing his American citizenship" (R. 183); and that he had illegally procured the certificate because "he was not * * * eligible for citizenship," due to his Communist Party membership within the statutorily prescribed ten-year period, "the prohibition being jurisdictional" (R. 177, 176-180).

On October 15, 1953, petitioner filed a notice of appeal from the judgment of the district court (R. 187) but took no further action. On November 10, 1954, upon stipulation of the parties, the appeal was

dismissed with prejudice by the Court of Appeals for the Sixth Circuit (R. 188).

Almost five years later, on August 6, 1958, petitioner, pursuant to Rule 60(b) (5) and (6) of the Federal Rules of Civil Procedure (*supra*, pp. 3-4), moved in the District Court for the Eastern District of Michigan to set aside the denaturalization decree of August 20, 1953, and to reinstate the judgment of naturalization of April 6, 1942 (R. 188-198). Petitioner contended that under the principles enunciated by this Court in *Nowak v. United States*, 356 U.S. 660, and *Maisenberg v. United States*, 356 U.S. 670, the judgment of cancellation "is voidable [and] it is no longer equitable that said judgment should have prospective application * * *" (R. 191).

On November 19, 1958, the district court (Picard, D.J.) denied the motion (R. 203-206). The court held that the *Nowak* and *Maisenberg* decisions " * * * do not * * * clearly control the instant case" (R. 205), and that, under the doctrine of *Ackermann v. United States*, 340 U.S. 193, petitioner could not collaterally attack the denaturalization judgment in a Rule 60(b) proceeding on the ground that there had been a change in the judicial view of the applicable law (R. 206).

On October 16, 1959, the court of appeals unanimously affirmed "for the reasons set forth" in the opinion of the district court (R. 207).

SUMMARY OF ARGUMENT

The present proceeding was instituted five years after petitioner's stipulation, while represented by

freely chosen counsel, to a dismissal *with prejudice* of his appeal from a judgment of denaturalization. It constitutes an attempt on his part to attack that judgment collaterally under Rule 60(b) of the Federal Rules of Civil Procedure on the ground that, although he decided that an appeal was futile because of decisions of the court of appeals which this Court declined to review, he may utilize the Rule to do the service of an appeal since subsequent decisions of this Court, over four years later, have endowed his legal contentions with more merit.

It is the government's position that, having voluntarily chosen not to prosecute his appeal, petitioner cannot resort to Rule 60(b) as a substitute for timely appeal because of an alleged change in the legal climate. We further submit that, even if the Court were to find that petitioner may now proceed under the Rule, the judgment of denaturalization is, in any event, valid on the merits.

I

A. Petitioner contends that he is entitled to relief from the judgment of denaturalization under clause (6) of Rule 60(b), which authorizes the district court to grant relief for "any other reason justifying relief from the operation of the judgment." But, this contention is squarely controlled by *Ackermann v. United States*, 340 U.S. 193, which held that a voluntary, unfettered, decision not to appeal a denaturalization decree may not be excused by permitting recourse to Rule 60(b)(6) as a substitute for appeal. In that case, the Ackermanns, in moving under Rule 60(b),

attempted to explain their failure to appeal on the grounds that their counsel had told them that they would have to sell their home to bear the cost of appeal and the government official in charge of the detention camp in which they had been placed following their denaturalization advised them not to appeal. Nonetheless, this Court rejected their assertions, agreeing with the district court that the Ackermanns had not established that the failure to appeal was sufficiently excusable to bring them within Rule 60(b). As this Court stated (340 U.S. at 198): "[Petitioner's] choice was a risk, but calculated and deliberate and such as follows a free choice. Petitioner cannot be relieved of such a choice because hindsight seems to indicate to him that his decision not to appeal was probably wrong * * *."

There is even less basis for allowing relief under Rule 60(b) here than in *Ackermann*. Like the Ackermanns, petitioner represented by freely chosen counsel actively participated in the denaturalization trial; like the Ackermanns, he decided not to appeal; and hence, like the Ackermanns, he should be bound to accept the consequences of that choice. But the Ackermanns alleged facts which, the dissenters in this Court concluded, might show that their decision not to appeal was not voluntary. In contrast, petitioner does not, and cannot, even claim that his decision was anything but a personal decision freely arrived at. In short, for all the reasons set forth in *Ackermann*, petitioner in this case may not be relieved from the judgment under Rule 60(b)(6).

B. 1. It is well established that a change in the judicial view of applicable law affords no basis for a motion to vacate a final judgment entered before announcement of that change. *Scotten v. Littlefield*, 235 U.S. 407, 410-411; cf. *Simmons Co. v. Grier Bros. Co.*, 258 U.S. 82, 88. Indeed, that very question was involved in *Ackermanns*. There, following the judgments of denaturalization, this Court decided *Baumgartner v. United States*, 322 U.S. 665, which significantly weakened the legal basis for the denaturalization of the Ackermanns. The government stipulated on the basis of the *Baumgartner* decision to the dismissal of the judgment of denaturalization against Keilbar, a co-defendant of the Ackermanns, who had appealed. Nevertheless, this Court found that the change in the law was insufficient to excuse the Ackermanns' voluntary decision not to appeal.

2. Nor can petitioner obtain relief from the judgment under clause (5) of Rule 60(b) providing for relief when "it is no longer equitable that the judgment should have prospective application". That language applies to the prospective features of a judgment, not the original decree. For example, the rule applies where conditions arising subsequent to the issuance of a continuing injunction are such as warrant modification. The prospective effects of the judgment here, however, consist wholly of the consequences that flow from that part of the judgment of denaturalization which revoked the grant of naturalization and cancelled the certificate of citizenship. As this

Court said in *United States v. Swift & Co.*, 286 U.S. 106, 119, in considering the principle later embodied in subsection (5): "The injunction, whether right or wrong, is not subject to impeachment in its application to the conditions that existed at its making. We are not at liberty to reverse under the guise of readjusting." In this case, petitioner is seeking a reversal of the original judgment, not a true readjustment.

3. The basic consideration of this issue is the long-standing policy of the law to protect the finality of judgments. If petitioner's contentions were sustained, whenever this Court or a court of appeals overruled or modified a prior decision, or crystallized the law, every lower court judgment not in conformity with the new decision would be subject to reexamination. But as this Court stated in *Ackermann*, 340 U.S. at 198, "There must be an end to litigation someday * * *."

II

Even if petitioner had standing to obtain relief under Rule 60(b), the judgment of denaturalization was correct because petitioner's admitted membership in the Communist Party in the ten-year period preceding his naturalization in 1942 rendered his naturalization illegal under the Nationality Act of 1940, 54 Stat. 1137.

A. 1. Section 305 of the Nationality Act of 1940 renders ineligible for naturalization a person who within ten years preceding his application for citizenship is a member of an organization advocating forcible or violent overthrow of the Government of the

United States. As the district court held, the evidence adduced at petitioner's denaturalization trial was, "clear, unequivocal and convincing" that petitioner was a member of the Communist Party during the proscribed period, and that the Party advocated forcible and violent overthrow of the Government of the United States during that period.

Petitioner himself admitted that he was a Party member from 1931 to 1938, that he attended monthly closed Party meetings, that he was Secretary of the Greek Fraction of the Party in Detroit, and that he left the Party in 1938, not because of disagreement with Party's objectives but only because of a Party directive that aliens resign. Two government witnesses confirmed that petitioner was an active Party member and an important functionary. In short, petitioner's Communist Party membership was not accidental or artificial but a purposeful and knowledgeable association with the Party as a distinct political entity. He was clearly a "member" within the standards laid down by this Court in deportation cases (*e.g.*, *Galvan v. Press*, 347 U.S. 522; *Rowoldt v. Perfetto*, 355 U.S. 113), and likewise a member within the prohibitions of Section 305.

The finding of the district court that, during petitioner's membership, the Communist Party advocated forcible and violent overthrow of the Government of the United States is convincingly borne out by the evidence, and is not contested here.

2. The legislative history of the Nationality Act of 1940 confirms that members of the Communist Party within ten years preceding their application for citi-

zenship were rendered ineligible for citizenship under that Act. The hearings before the House Committee on Immigration and Naturalization, which ultimately resulted in the Nationality Act, show that Section 305 was intended to take "care of Communists and those who advocate the overthrow of the Government." That this intent was carried out by Section 305 is not only emphasized by these hearings, but reiterated in debate in the House and in the Senate and House Reports.

Additionally, both the language and legislative background of Section 305 show that it was not meant by Congress to be limited to those members with personal knowledge of the organization's illicit purposes. Section 305 specifically excludes from citizenship *both* those who personally advocated overthrow by force and violence and those who were members of organizations with such unlawful objectives, and the Senate Report similarly emphasizes that Section 305 was meant to cover those who personally "entertained" proscribed aims, as well as those "affiliated" with, or "members" of, an organization whose objectives were illegal.

B. 1. It is well established that, when Congress has provided for cancellation of a certificate of naturalization on the ground that it has been illegally procured, the certificate may be cancelled upon proof that the alien was ineligible when naturalized. This Court has consistently ruled, in a variety of situations involving less crucial conditions than the one involved in this case, that the certificate is cancellable on the basis of illegal procurement unless there is strict compliance

with conditions which Congress has imposed as a prerequisite to an award of citizenship. This rule has been applied to such comparatively unimportant conditions as the failure to file a certificate of arrival, *United States v. Ness*, 245 U.S. 319, and the holding of the naturalization hearing in an improper place, *United States v. Ginsberg*, 243 U.S. 472. It would be strange indeed not to apply this rule where, as here, the condition involved was adopted by Congress because of its grave concern with the imminent threat of a world war.

2. *Schneiderman v. United States*, 320 U.S. 118, is not inconsistent with applying the doctrine of illegal procurement to this case. The Court in *Schneiderman* was dealing with the situation in which illegality was predicated upon the claim that the personal attitude of the applicant was irreconcilable with the requirement of attachment to the principles of the Constitution. The government sought to prove this attitude by inferring from Schneiderman's membership and position in the Party that Schneiderman himself believed in violent overthrow and therefore was not attached to the principles of the Constitution. As the Court pointed out, the government's case was thus premised upon "the admitted infirmities of proof by imputation." *Id.*, p. 154.

In this case, however, the proof was not based on inference or imputation. The test was not whether personal advocacy could be inferred from membership in the Communist Party; the question was simply whether petitioner was a member of a particular kind of organization at a particular time.

Moreover, the condition of attachment involved in *Schneiderman* could reasonably be read as satisfied by the finding of the *naturalization* court. Indeed, Mr. Justice Douglas, concurring in that case (320 U.S. 161, 162-163), specifically contrasted the condition involved there with the kind of unyielding condition involved here which went to the very jurisdictional base of the naturalization decree. In sum, the situation in this case is the sort described by Mr. Justice Holmes in *Maney v. United States*, 278 U.S. 17, 23, where the judgment of naturalization transcended the power of the naturalization Court and "may be declared void in the interest of the sovereign who gave to the judge whatever power he had."

3. The discussion of *Schneiderman* also disposes of petitioner's claim that this case is indistinguishable from the holding of *Nowak v. United States*, 356 U.S. 660, on the issue of illegal procurement. Since *Nowak* was naturalized under the Nationality Act of 1906, which did not, in terms, prohibit citizenships to members of organizations advocating overthrow of the government, the illegal procurement charge, as in *Schneiderman*, was predicated upon the personal test of lack of attachment. Hence the government was required to prove not merely that *Nowak* was a member of the Communist Party, but that the Party had illegal objectives of which petitioner was aware and which he endorsed. Since the government failed to show such endorsement, the Court reversed the denaturalization decree despite its finding that *Nowak* was an active member of the Party.

Here, however, the 1940 Act barred citizenship to persons who belonged, within the preceding ten years, to an organization advocating overthrow of the government by force and violence. Under that provision, the government's proof that petitioner was an active member of the Party and that the Party advocated forcible and violent overthrow was the complete proof required to show illegal procurement.

ARGUMENT

Petitioner seeks relief from a final judgment of denaturalization under Rule 60(b) of the Federal Rules of Civil Procedure, *supra*, pp. 3-4. More than one year having elapsed since the judgment before petitioner filed his motion, he is clearly not entitled to relief under clause (1) of Rule 60(b) on the ground of "mistake, inadvertence, surprise, or excusable neglect." Therefore, petitioner moved under clause (5) of the Rule which allows the district court to grant relief where it is "no longer equitable that the judgment should have prospective application" and under clause (6) authorizing the court to act for "any other reason justifying relief from the operation of the judgment."

Hence, once again, as in *Klapprott v. United States*, 335 U.S. 601, modified, 336 U.S. 942, and *Ackermann v. United States*, 340 U.S. 193, this Court has before it the question of the availability of relief from a final judgment of denaturalization under Rule 60(b) of the Federal Rules of Civil Procedure. Unlike either *Klapprott* or *Ackermann*, however, the complaint in this case is not predicated on any claim

that governmental intervention prevented petitioner from participating in the denaturalization trial or in taking an appeal. Petitioner, who was represented by freely chosen counsel, voluntarily stipulated that his appeal should be dismissed *with prejudice*. Basically, his claim is that, although he then deemed an appeal futile because of decisions by the court of appeals which this Court declined to review,⁷ subsequent decisions of this Court over four years later⁸ have endowed the appeal with more merit.

The government's position is that, after having voluntarily chosen (through his own counsel) not to appeal the judgment of denaturalization, petitioner cannot resort to Rule 60(b) as a substitute for a timely appeal. Otherwise, litigation would never end since any change in the law would allow judgments to be reopened. We further contend that, even if the Court were to hold that the final judgment of denaturalization in this case is now open to collateral attack, the judgment is valid on the merits.

I

PETITIONER, HAVING DELIBERATELY CHOSEN NOT TO APPEAL, CANNOT RELY ON RULE 60(b) AS A SUBSTITUTE FOR APPEAL

A. Rule 60(b) is not available to relieve a litigant from his prior voluntary decision not to appeal

The instant case is squarely controlled by the decision of this Court in *Ackermann v. United States*, 340 U.S. 193, that a freely made decision not to appeal a denaturalization judgment may not be excused by

⁷ *Sweet v. United States*, 211 F. 2d 118 (C.A. 6), certiorari denied, 348 U.S. 817.

⁸ *Nowak v. United States*, 356 U.S. 660, and *Maisenberg v. United States*, 356 U.S. 670.

permitting recourse to Rule 60(b)(6) as a substitute for appeal. In that case the United States had filed separate but identical complaints to revoke the citizenship of the Ackermanns and had filed a similar complaint against Keilbar (Mrs. Ackermann's brother). The complaints charged fraud in the oaths pledging allegiance to the United States and foreswearing allegiance to Germany. Each defendant, represented by counsel, defended against the suits which had been consolidated for trial. Following a trial on the merits, separate judgments of denaturalization were entered against each. The Ackermanns did not appeal. Keilbar, however, appealed, and the judgment of denaturalization against him was reversed under a stipulation with the United States Attorney that the evidence was insufficient to support it. *Keilbar v. United States*; 144 F. 2d 866 (C.A. 5).

Approximately four years after the decree of denaturalization the Ackermanns moved for relief under Rule 60(b) seeking to excuse their failure to appeal on the ground of financial inability, in that their attorney had told them that they would have to sell their home to pay the cost of appeal, and on the claim that they had relied upon the advice of a government official in charge of the detention camp in which they had been placed following their denaturalization. The district court found no merit to these claims and denied their motions to vacate the final orders of denaturalization. This Court agreed with that determination, holding that the Ackermanns' allegations did not establish that failure to appeal was sufficiently

excusable or justifiable to bring them within Rule 60(b)(6).⁹ As the Court explained the rationale of its holding (340 U.S. at 198):

Petitioner made a considered choice not to appeal, apparently because he did not feel that an appeal would prove to be worth what he thought was a required sacrifice of his home. His choice was a risk, but calculated and deliberate and such as follows a free choice. Petitioner cannot be relieved of such a choice because hindsight seems to indicate to him that his decision not to appeal was probably wrong, considering the outcome of the *Keilbar* case. There must be an end to litigation someday, and free, calculated, deliberate choices are not to be relieved from.¹⁰

In a word, petitioner's lack of standing to seek relief under Rule 60(b) follows *a fortiori* from *Ackermann*. Just as did the Ackermanns, petitioner (who was represented by counsel) participated actively in his denaturalization trial; like the Ackermanns, he freely chose

⁹ As in this case, relief there was not available under clause (1) of Rule 60(b) since the motion for relief was made more than one year after judgment was entered.

¹⁰ The *Ackermann* rationale that Rule 60(b) is not a substitute for appeal has been followed by the various courts of appeals. See, e.g., *Morse-Starrett Products Co. v. Steccone*, 205 F. 2d, 244, 249 (C.A. 9): "The provisions of Rule 60(b)(6) were not intended to benefit the unsuccessful litigant who long after the time during which an appeal from a final judgment could have been perfected first seeks to express his dissatisfaction"; *Elgin National Watch Co. v. Barrett*, 213 F. 2d 776, 779-780 (C.A. 5); *Title v. United States*, 263 F. 2d 28, 31 (C.A. 9), certiorari denied, 359 U.S. 989; *Collins v. City of Wichita*, 254 F. 2d 837 (C.A. 10); *Berryhill v. United States*, 199 F. 2d 217 (C.A. 6). For a similar view prior to *Ackermann*, see *United States v. Kunz*, 163 F. 2d 344, 346 (C.A. 2).

not to appeal after weighing what he deemed to be the decisive factors essential to the making of a rational decision in that regard; and hence, like the Ackermans, he should be bound to accept the consequences of that choice. As a matter of fact, the reasons submitted by petitioner in asking this Court to excuse his failure to continue with his appeal have even less appearance of validity than the reasons asserted by the Ackermans and rejected by this Court. There is no claim in this case that pressing financial considerations influenced petitioner's decision, or that he relied upon the advice of a government official—this latter contention carrying with it the implicit claim that governmental interference frustrated appeal. In contrast, petitioner asserts that his decision not to appeal was dictated by the conclusion that the then status of the law would render an appeal futile. It was thus, undeniably a personal choice, freely arrived at, in which freely chosen counsel participated.¹¹

The tactical decision made by petitioner is the kind of "voluntary, deliberate, free, untrammelled choice * * * not to appeal", which in *Ackermann* (340 U.S. at 200) was held to be the decisive criterion for determining whether reasons sufficient for Rule 60(b)(6) relief had been stated. Otherwise, it would seem that any losing party could simply decide to forego appeal because he believed the time inappropriate, and could secure exactly the same relief through collateral attack at a more propitious moment when, perhaps, the

¹¹ Petitioner's counsel then and now was also counsel in the *Nowak* and *Maisenberg* cases, *supra*, 356 U.S. 660, 670, as well as in *Sweet*, *Chomiak*, and *Charnawola*, *supra*, 211 F. 2d 118.

legal climate had changed. The net result would be to transform Rule 60(b)(6) relief into an easy alternative for direct appeal, available after the time for appeal has expired.¹²

That this is not the purpose of collateral review is made clear not only by *Ackermann*, but by *Sunal v. Large*, 332 U.S. 174. There, this Court dealt with the question of the right to obtain review, by writ of habeas corpus, of a criminal conviction from which the defendant had failed to appeal. In that case, at the time an appeal would have had to be taken from a conviction for refusing to submit to induction in the military, decisions of several courts of appeals, including that for the circuit to which appeal would

¹²The dissenters in *Ackermann* (340 U.S. at 202) did not disagree with the majority on the fundamental proposition that a freely made decision not to appeal may not be remedied at a later date by way of Rule 60(b) motion. The dissent proceeded on the hypothesis that the district court had denied the Ackermanns' motion on the pleadings and therefore had found that, even if their allegations were true, they had stated no grounds which would have excused an appeal. The dissent felt that that court should have instead heard evidence to determine whether justice would best be served by granting relief from the judgments. 340 U.S. at 203. In other words, the dissenters believed that, if the Ackermanns' claim that they were in effect denied the opportunity to appeal was proven to be true, the district court had jurisdiction under Rule 60(b) to afford them relief from the denaturalization judgment.

In this case, however, there are no factual issues as to the reason petitioner dismissed his appeal which require resolution by the district court. Rather, our position is that even if the reason given by petitioner for terminating his appeal is true (that appeal was futile in view of the then state of the law), the district court was right in finding that it provided no basis for Rule 60(b) relief.

have lain, were squarely contrary to petitioner's contentions. Under later decisions of this Court, however, the district court would have been bound to consider the defense which had been tendered and rejected. As this Court phrased it, the argument made to sustain the habeas corpus attack was that "since the state of the law made appeals seem futile, it would be unfair * * * to conclude [petitioners] by their failure to appeal" (*id.*, p. 178). The Court rejected this argument, stating that, "since [petitioners] chose not to pursue the remedy which they had, we do not think they should now be allowed to justify their failure by saying they deemed any appeal futile" (*id.*, p. 181). Cf. *United States v. Tucker Truck Lines*, 344 U.S. 33, 36-37. Just as in *Ackermann*, this Court in *Sunal*, while recognizing that collateral attack is an essential means of dealing with jurisdiction and exceptional cases of constitutional right, justice, and equity, found that it was not a remedy available to a litigant as a mere substitute for appeal of "errors of law"; in other words, it could not be distorted into a general method for obtaining relief from a judgment on any grounds which could have been raised on appeal (332 U.S. at 178-180).

No decision of this Court since *Ackermann* was decided in 1950 has weakened that holding. Petitioner attempts (Pet. Br. 26-27) to dispel the force of *Ackermann*, by relying upon *United States v. Ohio Power Co.*, 353 U.S. 98. But that case involved simply a construction by this Court of its own rules in vacating an order which denied a petition for rehearing, granting

certiorari, and reversing on the basis of recently decided cases.¹³ In no way did the decision touch on Rule 60(b) or modify the holding of *Ackermann*.

Petitioner also notes (Pet. Br. 25) the statement of Mr. Justice Black in *Klapprott v. United States*, 335 U.S. 601, 614-615, that the "other reason" clause of Rule 60(b) was intended to authorize courts "to vacate judgments whenever such action is appropriate to accomplish justice." We do not see how this language aids petitioner when it ~~was~~^{is} considered against the factual situation to which it was addressed. *Klapprott* involved what Mr. Justice Black characterized as "an extraordinary situation" (*id.* at 613), in which, assuming the truth of the allegations in that petitioner's motion for relief, he had been "deprived of any reasonable opportunity to make a defense" (*id.* at 613-614). In that case the motion for relief charged, *inter alia*, that when served with the complaint petitioner was ill and without funds; that prior to the entry of the default judgment he was arrested and imprisoned on a charge of violating the Selective Service Act,

¹³ It is perhaps also significant that in *Ohio Power* the petition was granted by the Court on June 11, 1956, considerably less than a year after the petition had been denied on October 17, 1955, and the timely petition for rehearing had been denied on December 5, 1955. Moreover, the United States kept the issue before the Court by petitioning for leave to file a second petition for rehearing which was denied on May 28, 1956. See 353 U.S. at 100-101. Here, however, petitioner dismissed his appeal by stipulation on November 10, 1954, and did not move for relief under Rule 60(6) until almost five years later on August 6, 1958. He took no action during that five years to challenge the judgment.

on which his subsequent conviction was ultimately set aside by this Court; that a letter he had drafted to the Civil Liberties Union seeking legal assistance in his denaturalization action was taken from him by federal agents and never mailed; and that the lawyer appointed to defend him in the criminal case promised also to help him in the denaturalization action, but failed to do so. In short, if Klapprott's allegations were true, his failure to defend the denaturalization suit was due to circumstances beyond his control; he was prevented from appearing and defending against the suit by a combination of factors in which governmental intervention and harassment played a major role. On the basis of these contentions, the Court ruled that Klapprott was entitled to a hearing in the district court.¹⁴ Accord, *United States v. Karahalias*, 205 F. 2d 331 (C.A. 2); *United States v. Backofen*, 176 F. 2d 263 (C.A. 3).

Simply to state the allegations of *Klapprott* is, we submit, to place in bold relief the crucial distinctions between that case and this. In *Klapprott*, ill health

¹⁴ The original judgment of the Court, considering these allegations as true, ordered that the district court set aside the default judgment and grant petitioner an opportunity to contest the naturalization action. 335 U.S. at 616. This judgment was thereafter modified to remand the cause to the district court with directions to receive evidence to determine the truth or falsity of petitioner's allegations contained in the motion to vacate. 336 U.S. 942. Following such a hearing, the district court found the allegations to be false and that Klapprott was in no way obstructed from defending against the action. *United States v. Klapprott*, 9 F.R.D. 282, affirmed, 183 F. 2d 474 (C.A. 3), certiorari denied, 340 U.S. 896.

and continued governmental harassment were alleged to have completely frustrated the defendant's opportunity to participate in any stage of the denaturalization proceedings at all. In this case, after having appeared and actively defended the government's suit at trial, petitioner freely chose not to proceed further. What was said in *Ackermann* has, therefore, if anything, more than equal force here (340 U.S. at 202):

The comparison strikingly points up the difference between no choice and choice; imprisonment and freedom of action; no trial and trial; no counsel and counsel; no chance for negligence and inexcusable negligence. Subsection (6) of Rule 60(b) has no application to the situation of petitioner. Neither the circumstances of petitioner nor his excuse for not appealing is so extraordinary as to bring him within *Klapprott* or Rule 60(b)(6).

7 Moore, *Federal Practice* (2d ed., 1955), pp. 294-304.

B. A subsequent change in applicable law does not excuse a voluntary choice not to appeal

1. It has long been settled doctrine that a change in the judicial view of applicable law affords no ground for a motion to vacate a final judgment entered before announcement of that change. See, e.g., *Scotten v. Littlefield*, 235 U.S. 407, 410-411; *United States v. Kunz*, 163 F. 2d 344, 346 (C.A. 2); *United States v. Borchers*, 163 F. 2d 347, 350 (C.A. 2); *Lehman Co. v. Appleton Toy & Furniture Co.*, 148 F. 2d 988, 989 (C.A. 7). As this Court stated in *Simmons Co. v. Grier Bros. Co.*, 258 U.S. 82, 88, it is an ancient rule of equity

practice that "a change in the authoritative rule of law, resulting from a decision by this court announced subsequent to the former decree, neither demonstrates an 'error of law apparent' upon the face of that decree nor constitutes new matter *in pais* justifying a review." Under the 1948 amendment to Rule 60(b) which abolished the historic ancillary remedies of common law and equity previously used to attack civil judgments¹⁵ and incorporated the substance of these remedies in the various subsections of Rule 60(b),¹⁶ this same legal principle has been uniformly held to control.

The issue whether a change in applicable law excuses, for purposes of Rule 60(b), a decision not to appeal was involved in the *Ackermann* case, *supra*. Following the judgments of denaturalization entered against the Ackermanns and Keilbar, this Court decided in *Baumgartner v. United States*, 322 U.S. 665, that evidence of attachment and loyalty to a foreign government at a date subsequent to naturalization has little force in establishing the falsity of the earlier oath of exclusive allegiance to the United States, a finding which significantly weakened the trial court's determination of the Ackermanns' denaturalization. Although the Ackermanns emphasized this change of law in their Rule 60(b) motion to show that the denaturalization determination was

¹⁵ *Coram nobis*, *coram vobis*, *audita querela*, bill of review, and bill in the nature of a bill of review were the remedies abolished.

¹⁶ The background and purpose of the 1948 amendment is discussed in detail in 7 Moore, *Federal Practice* (2d ed., 1955), pp. 220-221, 513-516.

erroneous," this Court did not find that such change of law was sufficient to overcome the Ackermanns' voluntary choice not to appeal. The judgment of denaturalization was upheld even though the government had stipulated in the court of appeals on the basis of *Baumgartner* to a reversal of the judgment of denaturalization against Keilbar, who had appealed. *Keilbar v. United States*, *supra*.¹⁸ See also the discussion of *Sunal v. Large*, *supra*, pp. 23-24.

Similarly, in *Title v. United States*, 263 F. 2d 28, 30-31 (C.A. 9), certiorari denied, 359 U.S. 989, a motion was made under Rule 60(b) against a judgment of denaturalization on the ground that an affidavit of good cause was never filed in the denaturalization proceedings and thus rendered the denaturalization judgment invalid in light of subsequent decisions of this Court.¹⁹ The defendant had filed a notice of appeal which had thereafter been dismissed for failure to prosecute. In denying the relief sought

¹⁷ Petition, p. 11, Nos. 35-36, Oct. Term, 1950. No brief was filed by the Ackermanns on the merits.

¹⁸ To the same effect in a proceeding by way of bill of review before the 1948 amendment, see *United States v. Kunz*, 163 F. 2d 344 (C.A. 2), where a defendant who had failed to appeal a judgment of denaturalization also sought to invoke the benefits of *Baumgartner*, which had been decided after such judgment was entered. The Second Circuit said: "[Defendant] cannot now employ a bill of review as a substitute for an appeal even on the ground that the Supreme Court in the *Baumgartner* case had changed what was supposed to be the law." *Id.*, p. 346.

¹⁹ *United States v. Zucca*, 351 U.S. 91; *Matles v. United States*, 356 U.S. 256.

under Rule 60(b), the court of appeals said (*id.*, pp. 30, 31):

Were Title's *appeal* presently before us, we would reverse the judgment of denaturalization rendered against him by the district court. But that appeal he has voluntarily failed to prosecute. He is in the same status as any other individual who fails to protect fully his valid legal rights, by neglecting to perfect his appeal.

* * * *

Rule 60(b) was not intended to provide relief for error on the part of the court or to afford a substitute for appeal. * * * Nor is a change in the judicial view of applicable law after a final judgment sufficient basis for vacating such judgment entered before announcement of the change.

In *Annat v. Beard*, 277 F. 2d 554 (C.A. 5), pending on a petition for a writ of certiorari, No. 262, this Term, the government brought a condemnation suit against a number of landowners involving common issues of law. While several of the landowners appealed from the district court's decision for the government, Mrs. Annat chose not to do so. Since the landowners who had appealed had been successful (*Paradise Prairie Land Co. v. United States*, 212 F. 2d 170 (C.A. 5)), the Fifth Circuit assumed that the condemnation judgment was erroneous. Nevertheless, the court held that Mrs. Annat's only remedy was appeal and therefore she could not seek relief from the judgment under Rule 60(b)(6). Accord: *Elgin National Watch Co. v. Barrett*, 213 F. 2d 776; 779-780

(C.A. 5); *Collins v. City of Wichita*, 254 F. 2d 837 (C.A. 10); *Berryhill v. United States*, 199 F. 2d 217 (C.A. 6); *United States v. Failla*, 146 F. Supp. 307, 313 (D. N.J.); *Louke v. United States*, 21 F.R.D. 305, 308 (S.D. N.Y.).

Petitioner seeks to escape the "change of law" rule of the *Ackermann* decision by emphasizing that the legal climate when he dismissed his appeal was such as to render the continuation of litigation on his part a hopeless and futile act. He says that the decision in *Sweet v. United States*, 211 F. 2d 118, in the Sixth Circuit and this Court's subsequent denial of certiorari, 348 U.S. 817, "settled the law of Petitioner's case" and, as a practical matter, rendered an appeal futile (Pet. Br. 24, 28).²⁰ But precisely the same legal climate did not stay *Nowak* and *Maisenberg* (who were represented by the same counsel as petitioner) from perfecting their appeals to the Sixth Circuit. Nor were they stayed by the adverse decisions in that circuit from seeking review in the Supreme Court. In light of their victories, the claim by petitioner that for him to have pressed his appeal to decision would have been a useless and unavailing act and that consequently his decision not to appeal was not made voluntarily seems hardly accurate. But even if petitioner were correct, his claim amounts to no more than that the applicable law which once was clearly in favor of the government's position

²⁰ Of course, a denial of certiorari by this Court "import[s] no expression of opinion on the merits." *Sunal v. Large*, *supra*, 332 U.S. at 181; see *House v. Mayo*, 324 U.S. 42, 48.

was subsequently changed; thus, petitioner cannot escape the clear implication of the *Ackermann* decision. The short answer is that "since [petitioner] chose not to pursue the remedy which [he] had * * * [he] should [not] be allowed to justify [his] failure by saying [he] deemed any appeal futile." *Sunal v. Large*, *supra*, 332 U.S. at 181.^{20a}

2. Petitioner cannot, as he seeks to do, rely upon the language of clause (5) of Rule 60(b) providing for relief when "it is no longer equitable that the judgment should have prospective application". That language applies to the prospective features of a judgment, not the original decree. For example, the rule applies where conditions arising subsequent to the issuance of a continuing injunction are such as warrant modification. The prospective effects of the judgment here, however, consist wholly of consequences that flow from that part of the judgment of denaturalization which revoked the order of naturalization and cancelled the certificate of citizenship. As this Court said in *United States v. Swift & Co.*, 286 U.S. 106, 119, in recognizing the underlying principle of subdivision (5): "The injunction, whether right or wrong, is not subject to impeachment in its application to the conditions that existed at its making. We are not at liberty to reverse under the guise of readjusting." Cf. 7 Moore, *Federal Practice* (2d ed., 1955), pp. 288-289. However he may phrase it, petitioner is,

^{20a} As pointed out in Point II, *infra*, we deny, in any event, that this case is the same as *Nowak* and *Maisenberg* or would be controlled by them on the merits.

in effect, seeking a reversal of the original judgment, not a true readjustment.

For this reason petitioner's reliance (Pet: Br. 28-29) upon *McGrath v. Potash*, 199 F. 2d 166 (C.A. D.C.), is misplaced. In that case the defendant obtained a permanent injunction, essentially prospective in nature and application, restraining the government from conducting a deportation proceeding not in accord with the provisions of the Administrative Procedure Act. Thereafter, Congress decreed that deportation proceedings should not be subject to the hearing provisions of that Act. In view of the fact that this subsequent statutory change rendered the prospective decree inequitable, the court of appeals ordered it dissolved. The *Potash* case thus presents the classic situation warranting Rule 60(b)(5) relief—i.e., one in which a prospective order required readjustment because of radically changed conditions. It is wholly unlike this case where the continuing force of the decree derives from facts fully accrued and litigated in the original judgment.

3. The basic consideration of this case is the long-standing policy of the law to protect the finality of judgments. See *Collins v. City of Wichita*, 254 F. 2d 837, 839 (C.A. 10); *Berryhill v. United States*, 199 F. 2d 217, 219 (C.A. 6); *United States v. Failla*, 164 F. Supp. 307, 315 (D. N.J.). As the Court explained in *Sunal*, 332 U.S. at 182:

It is not uncommon after a trial is ended and the time for appeal has passed to discover that a shift in the law or the impact of a new de-

cision has given increased relevance to a point made at the trial but not pursued on appeal.

* * * If in such circumstances, *habeas corpus* could be used to correct the error, the writ would become a delayed motion for a new trial, renewed from time to time as the legal climate changed. * * * Wise judicial administration of the federal courts counsels against such a course * * *

These considerations are no less applicable in a civil case. A contrary doctrine would mean that whenever this Court or a court of appeals overruled or modified a prior decision, or crystallized the law, every lower-court judgment not in conformity with the new decision would be subject to reexamination. Under such a doctrine there would be uncertainty and confusion rather than responsibility and definiteness in litigation. "Litigation must end some time, and the fact that a court may have made a mistake in the law when entering judgment, or that there may have been a judicial change in the court's view of the law after its entry, does not justify setting it aside". *Collins v. City of Wichita, supra*, 254 F. 2d at 839. "[T]he policy of the law is to protect the finality of judgments, not only for the benefit of the interests and rights of the litigants, but in the public interest in expeditious disposition of litigation." *United States v. Failla, supra*, 164 F. Supp. at 315. And as this Court said simply but very definitely with respect to the stronger factual contentions made in *Ackermann, supra*, 340 U.S. at 198: "There must be an end to litigation someday * * *."

II

**IN ANY EVENT, THE JUDGMENT CANCELLING
PETITIONER'S CITIZENSHIP WAS PROPER**

We have argued in the preceding portion of this brief that petitioner's voluntary, deliberate, decision to dismiss his appeal precludes his present attempt to obtain relief under Rule 60(b). In this portion of the brief we argue that, even if petitioner had standing, under the Rule, the judgment of denaturalization was correct because petitioner's admitted membership in the Communist Party in the ten-year period preceding his naturalization in 1942 rendered his naturalization illegal under the Nationality Act of 1940, 54 Stat. 1137. As we discuss below, the 1940 Act contained a provision which was specifically designed to, and effectively did, make persons who had been members of the Communist Party within the preceding ten years ineligible for naturalization. Therefore, petitioner's naturalization was properly cancelled on the ground of illegal procurement under the 1940 Act because he was ineligible for citizenship when he was naturalized in 1942 under the 1940 Act.

A. Petitioner was ineligible for naturalization at the time he was naturalized in 1942

1. The evidence conclusively shows that petitioner had been, within the ten years preceding his naturalization, a member of an organization advocating the overthrow of the government by force and violence and thus was barred from citizenship under Section 305 of the Nationality Act of 1940

Section 305 of the Nationality Act of 1940, declared that "[n]o person shall hereafter be naturalized as a citizen of the United States" if such person had been within ten years preceding his application for citizen-

ship a member of an organization advocating forcible or violent overthrow of the Government of the United States. After reviewing the evidence introduced by the government at petitioner's denaturalization trial, the district court concluded, *inter alia*, that the evidence was "clear, unequivocal and convincing" that petitioner who was naturalized in 1942 had been a member of the Communist Party within the ten years immediately preceding his petition for naturalization, and that, during petitioner's membership, the Communist Party advocated the overthrow by force and violence of the Government of the United States (R. 176-181). "For these reasons," the court said, the "government must prevail on the jurisdictional question that defendant was not eligible to become a citizen when he filed his naturalization petition or when he took the oath, because admittedly, within the ten-year statutory period, he had been a member of the Communist Party of the U.S., an organization that advised, advocated, or taught overthrow of this government by force and violence" (R. 181).

As described in the Statement, *supra*, pp. 5-7, the evidence of petitioner's membership in the Communist Party rests on his own testimony to that effect, as well as the testimony of government witnesses. According to petitioner, he was a member of the Communist Party from 1931 to 1938 and attended closed meetings about once a month. He further testified that he was a member of the Bureau of the Greek Fraction of the Party in Detroit, and was at one time its Secretary. Moreover, while he left the Party in 1938, he said this was not because of any dispute or

difference with its aims and objectives, but because of a directive put out by the Party leadership that all aliens resign. In fact, he stated that he still believed in the aims and objectives of the Party when he was naturalized in 1942.

Leo Syrakis testified that petitioner introduced him into the Party in 1935, and that, in that year, petitioner was the director of all Greek activities in the Party in Michigan and the one empowered to educate all of the members of the units in Communism. The testimony of William Nowell corroborated the fact that in the middle 1930's petitioner was a "high functionary" of the Party. In sum, as the trial court found, petitioner held "offices of trust and responsibility in the Party during the years 1931 through 1938" (R. 183). And Syrakis and Nowell testified that petitioner personally advocated forceful and violent overthrow (see R. 123-124, 126, 132, 165-166)."

This is therefore not a case of accidental or artificial membership during the statutorily proscribed period. Rather, petitioner's membership was, at the very least, a knowledgeable and purposeful association with the Communist Party as a distinct and active political entity. Such membership would clearly meet the deportation standard which has been laid down by the Court (*Galvan v. Press*, 347 U.S. 522; *Rowoldt v. Perfetto*, 355 U.S. 113; *Niukkanen*

²¹ But while such advocacy in itself made petitioner ineligible for naturalization under Section 305 of the Act, this was not the ground on which the finding of illegality of the district court was based (R. 176-180).

v. *McAlexander*, 362 U.S. 390), and surely was sufficient to constitute "membership" which disqualified an alien from naturalization benefits under Section 305 of the Nationality Act of 1940.

Secondly, there was clear and convincing proof adduced at trial that the Communist Party, during petitioner's membership, was an organization which advocated the forcible and violent overthrow of the Government of the United States. The district court so found after carefully examining the evidence (R. 176-180), and petitioner does not contest this finding here.²² See *Harisiades v. Shaughnessy*, 342 U.S. 580, 584.

Accordingly, the evidence conclusively established that, within ten years prior to petitioner's naturalization in 1942, he had been a member of an organization which advocated the violent overthrow of the Government of the United States. He was therefore ineligible for naturalization under Section 305.

²² The evidence as to the illegal aims of the Party is summarized at R. 199-200, and is set out in the opinion of the district court at R. 177-180. The statement in *Schneiderman v. United States*, 320 U.S. 118, 157, that it was a tenable conclusion that "the Party in 1927 desired to achieve its purpose by peaceful and democratic means * * *" is not dispositive of the nature of the Communist Party in 1931-1938. See *Yates v. United States*, 354 U.S. 298, 336-337, where this Court said: "The Court in *Schneiderman* certainly did not purport to determine what the doctrinal content of 'Marxism-Leninism' might be at all times and in all places. Nor did it establish that the books and pamphlets introduced against *Schneiderman* in that proceeding could not support in any way an inference of criminality, no matter how or by whom they might thereafter be used."

2. The legislative history of the Nationality Act of 1940 confirms that members of the Communist Party were rendered ineligible for citizenship under that Act.

That the unequivocal bar to citizenship established by Section 305 was meant to preclude citizenship to a member of the Communist Party—*i.e.*, that the Party was, in the judgment of Congress, an organization which advocated forcible and violent overthrow—is made clear by the legislative history of the 1940 Act.

The original draft of the Nationality Act of 1940, as first considered by the Committee on Immigration and Naturalization of the House of Representatives,²³ contained no express language prohibiting citizenship to aliens advocating violent and forcible overthrow, or to those who were members of organizations having such illicit objectives. As originally drafted, that section was, in its basic tenor, simply a carry-over of the provision contained in the then existing law (Section 7 of the 1906 Act, 34 Stat. 598). As Henry B. Hazard, Administrative Assistant to the Commissioner of Immigration and Naturalization, explained to the Committee: "Section 305 is the same as present law, which prohibits the naturalization of persons with anarchistic ideas. It is almost word for word a copy of the present statute." *Hearings*, p. 68; see also *id.*, pp. 121-122. Almost immediate concern at what several members of the Committee deemed to be its "hazy" and "negative" language (*id.*, pp. 304-305)

²³ *Hearings Before the Committee on Immigration and Naturalization, House of Representatives, on H.R. 6127, as superseded by H.R. 9980, to Revise and Codify the Nationality Laws of the United States* [hereinafter *Hearings*], 76th Cong., 1st Sess.

led to a desire to redraft Section 305 completely, as Congressman Mason put it, to insert "proper language to shut out Communists" (*id.*, p. 305). Just prior to the close of the hearings on May 13, 1940, this purpose was expressed, as follows (*id.*, pp. 321-322):

Mr. REES. There is an instruction to provide an amendment to cover section 305.

Mr. VAN ZANDT. We want an amendment in there to take care of Communists and those who advocate the overthrow of the Government.

* * * * *

The CHAIRMAN [CONGRESSMAN DICKSTEIN]
* * * Without objection the amendment will include Communists and also Fascists and Nazis and any others who advocate attempting to overthrow the Government.

The next day, in accord with this express purpose, Congressman Rees, at an executive session of the Committee, submitted an amendment which embodied the essential features of Section 305 as it was finally adopted. *Hearings*, p. 327. The Committee's explanation of this provision shows that its aim was to prohibit the naturalization of Communists, Nazis, and Fascists. *Id.*, pp. 328-331. As Chairman Dickstein construed the amendatory language, it was "in addition to and not in substitution of the law. Therefore, you are getting something more than what the present law is. I think you covered all the ground. I think this amendment should be adopted because that will cover all of the multitude of discussions you had this morning" (*id.*, p. 329).

The bill as considered by Congress included this new provision. Although there was little debate in either

House on Section 305, what there was emphasized the fact that one of its principal purposes was to preclude the naturalization of Communists. On the floor of the House, Congressman Rees, who had drafted the new Section 305, when called on to explain it stated (86 Cong. Rec. 11949):

The old law denies citizenship to anarchists, believers in polygamy, and some other classes.

Under this bill, we believe we have covered the question of fascism, nazi-ism, communism, or any other "ism" although they are not specifically mentioned by name. [Emphasis added.]

Similarly, the Committee Reports which accompanied the bill as finally adopted (H.R. 9980) re-emphasized the broadened exclusionary purpose of this provision. The Senate Committee on Immigration observed that "[a] particularly desirable feature of the code is the broadening of the prohibition against the naturalization of persons who are members of anarchistic or other subversive groups or who believe in, or advocate, subversive doctrines or sabotage. This provision would be applicable to any person who within 10 years prior to filing a petition for naturalization has entertained any such views or has been affiliated with any organization or group of a subversive nature." S. Rept. No. 2150, 76th Cong., 3d Sess., p. 3; see also H. Rept. No. 2396, 76th Cong., 3d Sess., p. 2.

The language and legislative background of Section 305 further make plain that, contrary to petitioner's contention (Pet. Br. 17-18), Congress did not mean to limit the exclusionary reach of Section 305 to those members with personal "knowledge" of the organiza-

tions illicit purposes. The legislative history indicates that, while Congress considered imposing such a requirement, it decided against it. *Hearings*, p. 394. Indeed, the absence of any such requirement is plain from the internal structure of Section 305 itself. By its express terms, it excluded from citizenship *both* those who personally advocated ~~overthrow~~ by force and violence and those who were members of organizations having such unlawful objectives. If Congress intended that proof of personal advocacy be required in both situations, then the clause relating to "membership" would be meaningless surplusage. As the Senate Report quoted above emphasizes, Section 305 was meant to cover those who personally "entertained" proscribed aims, as well as those "affiliated" with, or "members" of, an organization whose objectives were illegal. Furthermore, the critical language of Section 305 of the 1940 Act is the same as, and was probably taken from, the language of the deportation provisions of the then Registration Act of 1940 (passed a few months earlier) which the Court has held does not require personal knowledge of the Party's unlawful objectives. *Harisiades v. Shaughnessy*, 342 U.S. 580; *Galvan v. Press*, 347 U.S. 522, 525-528.

The sum of it is that Congress in Section 305 of the Nationality Act of 1940 intended (1) that *membership* in an organization advocating forcible and violent overthrow be a complete bar to the attainment of citizenship, without proof that the applicant for citizenship personally advocated or endorsed the organization's illegal objectives and (2) that the Communist

Party be considered to be such an organization advocating forcible and violent overthrow. Petitioner, as a person who had been a member of the Communist Party within ten years preceding his application for citizenship in 1942, was therefore ineligible for naturalization.

B. The naturalization of a person who was ineligible for citizenship when naturalized could properly be cancelled on the ground of illegal procurement under the 1940 Act

1. It is well established that, where Congress has provided for cancellation of a certificate of naturalization on the ground that it has been illegally procured,²⁴ the certificate may be cancelled upon proof, without more, than the alien was ineligible when naturalized. This Court has consistently ruled in a variety of situations, involving less crucial conditions for naturalization than the one present here, that the certificate is cancellable on the basis of illegal procurement unless there is strict compliance with the conditions Congress has imposed as pre-requisites to an award of citizenship. See, e.g., *Maney v. United States*, 278 U.S. 17; *United States v. Ness*, 245 U.S. 319; *United States v. Ginsberg*, 243 U.S. 472; *Luria v. United States*, 231 U.S. 9, 24; *Johannessen v. United States*, 225 U.S. 227, 240; *Tutun v. United States*, 270 U.S. 568, 578; *Schwinn v. United States*, 311 U.S. 616; cf. *Harisiades v. Shaughnessy*, 342 U.S. 580, 585, note 5. In *United States v. Ginsberg*, *supra*, a certificate of naturalization was cancelled because the hearing was held in

²⁴ Under the Immigration and Nationality Act of 1952, illegal procurement is no longer a specific basis for cancellation of a certificate of naturalization.

chambers, rather than in open court. The Court said (243 U.S. at 475):

No alien has the slightest right to naturalization unless all statutory requirements are complied with; and every certificate of citizenship must be treated as granted upon condition that the Government may challenge it as provided in § 15 and demand its cancellation unless issued in accordance with such requirements. If procured when prescribed qualifications have no existence in fact it is illegally procured * * *.

It would be strange indeed to apply this rule of cancellation to the failure to file a certificate of arrival (*United States v. Ness*, 245 U.S. 319), to non-compliance with the residence requirement (*Johannessen v. United States*, 225 U.S. 227), and to the holding of the naturalization hearing in an improper place (*United States v. Ginsberg*, 243 U.S. 472), and yet not apply it to the case where the alien obtaining the certificate was a member of a class specifically debarred from citizenship as a result of Congress' grave concern for the safety of the nation at a time (October 1940) when a "world war was threatening to involve us." Cf. *Harisiades v. Shaughnessy*, 342 U.S. 580, 590, discussing the same conditions which motivated the adoption of the Alien Registration Act of 1940 in June 1940. Stated in other words, citizenship was illegally procured where, within the ten years immediately preceding his petition for citizenship under the Nationality Act of 1940, an applicant for citizenship was a member of the Communist Party and thus within the class excluded from citizenship by Congress. Under the complete and exclusive authority

over naturalization which is expressly provided in the Constitution (Art. I, § 8, Cl. 4) and which has long been recognized by this Court (e.g., *Maney v. United States*, 278 U.S. 17, 23; *Tutun v. United States*, 270 U.S. 568, 578); *United States v. Macintosh*, 283 U.S. 605). Congress had the power to provide that a certificate thus illegally procured should be cancelled.

2. The decision of this Court in *Schneiderman v. United States*, 320 U.S. 118, is not inconsistent with applying the doctrine of illegal procurement to this case. There, denaturalization proceedings had been instituted in 1939 to cancel a certificate obtained in 1927 under the Nationality Act of 1906, which did not specifically prohibit citizenship to members of organizations advocating overthrow of the government by force and violence. The complaint charged that the certificate had been illegally procured in that the applicant was not, at the time of his naturalization and during the preceding five years, a person attached to the principles of the Constitution since he was then a member of, and a believer and supporter of the principles of, certain Communist organizations which advocated overthrow of the Government of the United States by force and violence. The Court was considering the situation in which illegality was predicated upon the claim that the personal attitude of the applicant, despite the favorable testimony of the requisite witnesses and the finding of the naturalization court, was irreconcilable with the requirement of attachment to the principles of the Constitution. It was against this background of attempted cancellation because of personal belief that the Court questioned

whether the government could re-examine the naturalization court's determination by means of an illegal procurement charge. See 320 U.S. at 124. As a matter of fact, the Court assumed that a certificate could be set aside under Section 15 of the 1906 Act on the basis of illegal procurement, holding merely that the government had failed in its proof. *Id.*, pp. 124-125. On this theory of illegality based on lack of attachment to the principles of the Constitution, it had to be shown that Schneiderman himself had the belief in violent overthrow which was incompatible with the principles of the Constitution. The government's position was that such personal belief could be found from Schneiderman's membership and position in the Party on the theory that his membership and position would not have been possible without belief in violent overthrow. As this Court emphasized, however, the government's case failed because it was based entirely upon "the admitted infirmities of proof by imputation." *Id.*, p. 154; see also *id.*, p. 146.

In contrast, in this case where citizenship was acquired despite the express proscription of Section 305 of the 1940 Act, no such "infirmities of proof" exist. There is no need to proceed by inference or imputation. The test is not lack of attachment which the government attempts to show by inferring personal advocacy of force or violence from membership in the Communist Party; instead, the question is simply whether petitioner was a member of a particular kind of organization. Congress, by Section 305, excluded from citizenship those aliens who had belonged to an organization advocating the violent over-

throw of the government, whether or not the alien personally advocated such violent overthrow, because it believed that to grant citizenship to members of that class would be detrimental to the best interests of the United States. All that was required to establish illegal procurement and to permit cancellation of naturalization was proof of membership in an organization embraced within the excluded class—*i.e.*, one which advocated forcible and violent overthrow of the Government of the United States. In this case, membership in the Party was made abundantly plain by the evidence adduced at petitioner's denaturalization trial, and the finding that the Party was a prescribed organization is not challenged (see *supra*, pp. 5-7, 36-37).

Moreover, the condition upon which the charge of illegal procurement was premised in *Schneiderman* was significantly different from that involved in this case. The *Schneiderman* condition could fairly be interpreted as satisfied when the naturalization court made a finding of attachment. Mr. Justice Douglas, concurring in that case (320 U.S. at 162-163), stated that the pertinent language of the 1906 Act,²⁵ "made the *finding* the condition precedent [to naturalization], not the weight of the evidence

²⁵ Subdivision *Fourth* of Section 4 of the 1906 Act, at the time when *Schneiderman* was naturalized, provided in pertinent part:

"It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application * * * he has behaved as a man * * * attached to the principles of the Constitution of the United States * * *." (Emphasis added.)

underlying the finding" (emphasis added). *Ibid.* Indeed, he contrasted that type of pre-requisite with the unyielding sort of condition going to the very core of the naturalization decree, the "so-called 'jurisdictional' fact 'upon which the grant is predicated' " (*id.*, p. 163):

If an anarchist is naturalized, the United States may bring an action under § 15 to set aside the certificate on the grounds of illegality. Since Congress by § 7 of the Act forbids the naturalization of anarchists, the alien anarchist who obtains the certificate has procured it illegally whatever the naturalization court might find. The same would be true of communists if Congress declared they should be ineligible for citizenship. Then proof that one was not a communist and did not adhere to that party or its belief would become like other express conditions in the Act a so-called "jurisdictional" fact "upon which the grant is predicated" [citing *Johannessen v. United States*, 225 U.S. 227, 240].

It is precisely the kind of condition adverted to by Mr. Justice Douglas that is involved here. Congress by the 1940 Act clearly meant to bar members of the Communist Party from citizenship. That one who fell within this prohibition was, in fact, naturalized did not mean that, as to him, the Congressional condition had no application or that it was waived or satisfied. Rather, as the district court concluded here, the granting of the certificate in such a case would amount to a "jurisdictional defect," and citizenship so acquired would be subject to cancellation. As Mr. Jus-

tice Holmes phrased the underlying rationale of the doctrine of illegal procurement in *Maney v. United States*, 278 U.S. 17, 23, in upholding a denaturalization for failure to file the certificate of arrival at the time of filing the petition for naturalization, "a record that discloses on its face that the judgment transcends the power of the judge may be declared void in the interest of the sovereign who gave to the judge whatever power he had." Surely, if non-compliance with an express Congressional directive warranted the cancellation in *Maney*, by the same token to have granted citizenship to one barred under Section 305 of the 1940 Act "transcend[ed] the power of the judge [and] may be declared void". Any other conclusion would do violence to the express Congressional purpose and disregard the accepted view of this Court that a naturalization court cannot exercise powers beyond those granted it by Congress.

The *Schneiderman* decision therefore did not affect the long-standing rule that Congress may fix the conditions and qualifications of citizenship. Where Congress has imposed, as it did in the 1940 Act, an express bar on the acquisition of citizenship by members of organizations which advocated forceful and violent overthrow of the government (i.e., a "jurisdictional" condition), an action to cancel citizenship acquired despite that prohibition was available to vindicate the Congressional purpose.²⁶

²⁶ Consequently, we think the recent district court decision in *United States v. Richmond*, N.D. Cal., Civil No. 31995, decided November 19, 1959, is erroneous. In that case it was held that a denaturalization action cannot be maintained unless there was

3. Our discussion of *Schneiderman* also disposes of the claim of petitioner's extended argument (Pet. Br. 12-24) that this case is indistinguishable from *Nowak v. United States*, 356 U.S. 660, on the issue of illegal procurement.²⁷ Unlike petitioner, who had been naturalized under the Nationality Act of 1940, but like *Schneiderman*, *Nowak* had been naturalized under the Nationality Act of 1906, which did not, in terms, prohibit citizenship to members of organizations advocating overthrow of the government by force and violence. As a consequence, the charge of illegal procurement against *Nowak* was not and could not have been predicated on the ground that, when he acquired citizenship, he was a member of a class which Congress had barred from citizenship—the theory relied on here. The theory of *Nowak* was precisely the same as that in *Schneiderman*. The specific issue was whether the condition of attachment to the principles of the Constitution of the United States was irreconcilable with *Nowak's* Communist

some evidence of the Section 305 ineligibility before the naturalization judge from whom the certificate was obtained. The court's error is that it makes the validity of the action turn on whether there was any evidence in the original proceeding to show that the naturalization judge's determination was wrong. The true criterion, as we have discussed above, is whether the court was in fact acting without the power granted by Congress. If it was, then regardless of the evidence it relied upon, such certificate is subject to cancellation because the naturalization court was without jurisdiction to grant naturalization.

²⁷ *Maisenberg v. United States*, 356 U.S. 670, also relied upon by petitioner, did not involve the question of illegal procurement at all since cancellation was there sought under the Immigration and Nationality Act of 1952, 66 Stat. 163, 260, which does not make illegal procurement a ground for denaturalization.

Party membership. Even assuming that non-attachment could be proved in this indirect manner (cf. *Schneiderman v. United States*, 320 U.S. 118, and our discussion *supra*, pp. 44-48), the government had to sustain a two-fold burden of proof. It had to establish first the illegal objectives of the Party as defined by the statute and second that the defendant-member was aware of and endorsed the Party's illegal advocacy. Finding that the government's evidence on this latter element of its case fell short of meeting the "clear and convincing" test, this Court held that it had failed to prove its charge, despite the fact that the evidence did show that Nowak was an "active member" and "functionary" of the Party. 356 U.S. at 666-667.

A totally different set of circumstances is presented by this case. While the cancellation suits against both Polites and Nowak were instituted under the 1940 Act, citizenship by each had been acquired under different statutory schemes, imposing different conditions and obligations. To denaturalize Nowak, who had acquired citizenship under the 1906 Act, proof of personal knowledge and personal advocacy of violent overthrow was necessary to establish that he had failed to meet the pre-requisite of attachment when naturalized. In this case, where citizenship was acquired under the 1940 Act, illegality was established by a direct showing that petitioner was a meaningful and active member of the Communist Party and that the Party advocated forcible and violent overthrow at the time of his admitted membership (1931-1938). These findings were not merely pre-

liminary to proof of personal knowledge and advocacy from which, it was claimed, an inference could be drawn of lack of attachment. These two elements—meaningful membership in the Party and the Party's unlawful objectives—which were merely building blocks in *Nowak* and *Schneiderman*, were the complete proof necessary to sustain the illegal procurement charge here.²⁸ This was the holding in *Chomiak v. United States*, 108 F. Supp. 527 (E.D. Mich.), affirmed, 211 F. 2d 118, 119-120 (C.A. 6), certiorari denied, 348 U.S. 817, which led petitioner to abandon his appeal. The validity of that decision has not been affected by this Court's ruling in *Nowak v. United States*, 356 U.S. 660. Petitioner's prior view that the ruling in *Chomiak* and *Sweet* governed his case was correct then and, contrary to petitioner's present position, it governs his case now.

In sum, Congress in the Nationality Act of 1940 adopted, as a basic pre-requisite to the acquisition of citizenship, the requirement that the applicant not be a member of the Communist Party at any time within ten years immediately preceding his petition for naturalization. Where, despite this mandatory prohibition, a member of the Communist Party, like peti-

²⁸ Petitioner cannot properly rely, as he seeks to (Pet. Br. 22), upon this Court's observation in *Nowak, supra*, 356 U.S. at 668, that "Congress in the Nationality Act of 1940 did not make membership or holding office in the Communist Party a ground for loss of citizenship." For this statement simply re-enforced the Court's finding that a person naturalized under the 1906 Act could not be denaturalized under the 1940 Act for failure to meet a condition which was not in the earlier legislation, but was adopted by Congress long after his naturalization.

SUPREME COURT OF THE UNITED STATES

No. 25.—OCTOBER TERM, 1960.

Gus Polites, Petitioner,	}	On Writ of Certiorari to the
v.		United States Court of Ap-
United States.		peals for the Sixth Circuit.

[November 21, 1960.]

MR. JUSTICE STEWART delivered the opinion of the Court.

Petitioner is a native of Greece who came to this country in 1916. In 1942 he became a naturalized citizen by decree of the United States District Court at Detroit, under the provisions of the Nationality Act of 1940.¹ In 1952 the United States brought proceedings under § 338 (a) of the 1940 Act to revoke his citizenship.² These proceedings culminated in a judgment of denaturalization, 127 F. Supp. 768. An appeal from that judgment was docketed in the Court of Appeals for the Sixth Circuit. Subsequently, under circumstances to be related, counsel for the petitioner stipulated to dismissal of the appeal with prejudice, and the appeal was dismissed in accordance with the stipulation. Four years later the petitioner brought the present action to vacate the judgment of denaturalization, relying upon Rule 60 (b), Fed.

¹ 54 Stat. 1137.

² Section 338 (a) of the Nationality Act of 1940, 54 Stat. 1158-1159, provided: "It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings . . . for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured."

Rules Civ. Proc. The District Court denied the motion, 24 F. R. D. 401, and the Court of Appeals affirmed, 272 F. 2d 709. Certiorari was granted to consider the availability of Rule 60 (b) relief in the circumstances here presented, 361 U. S. 958.

Section 305 of the Nationality Act of 1940 provided that no person should be eligible for naturalization who at any time within ten years preceding his application had been a member of any organization that advocated the overthrow by force or violence of the Government of the United States.¹ The Government's complaint in the 1952 denaturalization proceedings charged that the petitioner's citizenship had been illegally procured because within ten years immediately preceding his application for naturalization he had been a member of the Communist Party of the United States, an organization which, it was alleged, advised, advocated, or taught the over-

¹ The provisions of Rule 60 (b) upon which the petitioner relied are as follows: "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: . . .

(5) . . . it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment."

² "No person shall hereafter be naturalized as a citizen of the United States—

"(b) Who believes in, advises, advocates, or teaches, or who is a member of or affiliated with any organization, association, society, or group that believes in, advises, advocates, or teaches—

"(1) the overthrow by force or violence of the Government of the United States or of all forms of law; . . .

"The provisions of this section shall be applicable to any applicant for naturalization who at any time within a period of ten years immediately preceding the filing of the petition for naturalization is, or has been, found to be within any of the clauses enumerated in this section, notwithstanding that at the time petition is filed he may not be included in such classes." 54 Stat. 1141.

throw by force and violence of the Government of the United States."

At the denaturalization hearing the petitioner, who was represented by counsel, testified that he had been a member of the Communist Party of the United States from "around" 1931 until 1938. He stated that he had attended closed Party meetings about once a month, that he had been secretary of the "Greek Fraction" of the Party in Detroit, and that he had left the Party in 1938 only because of a directive that all aliens resign from the Party at that time. Other witnesses described the petitioner as a "high functionary" of the Party, who at closed meetings had advocated the overthrow of existing government by force and violence.*

*The complaint also alleged that the petitioner had obtained his naturalized citizenship fraudulently.

*The following are illustrative examples of such testimony.

"Q. What was his statement? What did he say?"

"A. He say the way to organize, agitate—agitate the workers, organize them, in order to follow up when the time comes to overthrow the government by force and violence.

"Q. Did he ever say in your presence the methods that he was going to use?"

"A. Well, the only method he said was by force. He said that we, the workers, would never be able to get in the Government by vote.

"Q. This was April and May, 1935. What did he say?"

"A. We had this campaign for the bi-weekly paper, and he spoke very ardently to the members that we had to go ahead and subscribe and get the money that we supposed to collect in order to reach them workers and wait in our movement until the time comes when we would be able to overthrow the present government by force and violence.

"Q. And you heard him say that at a Greek Fraction meeting?"

"A. Yes.

"Q. Do you know of your own knowledge what positions the

Based upon this and other testimony, the District Court found that the Government had proved by clear, unequivocal, and convincing evidence that the petitioner had been a member of the Communist Party of the United States within the statutory period, and that the Party was an organization which "was then advising, advocating, or teaching forcible or violent overthrow of this government." 127 F. Supp. at 770. Accordingly, the court held that the petitioner had illegally procured his citizenship, because he had not been eligible to become a citizen at the time his certificate of naturalization was issued. A judgment cancelling the petitioner's citizenship was entered, 127 F. Supp. 768, 770-772.*

From this judgment the petitioner promptly appealed to the United States Court of Appeals for the Sixth Cir-

defendant, Guss Polites, held in the Communist Party during that period of time?

"A. Not all of the positions. I do know that he was a member of the Fraction Bureau of the Greek Fraction, and my recollection is that he was Secretary of that Fraction for a time. At least, he was a high functionary and attended functionary meetings.

"A. He has, in speeches, advocated the overthrow of the government by force and violence, during my presence."

"In connection with the issue of fraudulent procurement, the court also found that the Government had proved by clear, unequivocal, and convincing evidence that the petitioner had personally known that the Communist Party of the United States was an organization advocating overthrow of this Government by force and violence. 127 F. Supp. 768, 772-773.

* The court also found that the petitioner had procured his citizenship fraudulently. The respondent now states that it does "not now rely upon the fraud finding as an alternative basis for the judgment of denaturalization." In the light of its concession that, "in view of the state of this particular record," the finding of fraud was not supported by sufficient evidence, we proceed upon that premise.

cuit. At the time there were pending in that court appeals from three other denaturalization judgments by the same District Court. *United States v. Sweet*, 106 F. Supp. 634; *United States v. Chomiak*, 108 F. Supp. 527; and *United States v. Charnowola*, 109 F. Supp. 810. Petitioner's counsel appeared and argued for the appellants in each of those three cases. Before the petitioner's brief was due, the Court of Appeals affirmed the judgments in all three of them, 241 F.2d 118. The petitioner thereafter obtained an extension of time for filing briefs on the appeal of his case until thirty days after disposition by this Court of petitions for certiorari filed in the other three cases. When those petitions for certiorari were denied, 348 U. S. 817, the petitioner by his counsel stipulated in the Court of Appeals that his appeal should be dismissed with prejudice, and the appeal was dismissed on November 10, 1954.

On August 6, 1958, the petitioner filed his motion under Rule 60 (b) (5) and (6) to set aside the 1953 denaturalization decree. The ground for the motion, supported by an affidavit of counsel, was that in the light of this Court's opinions in two cases which had recently been decided, *Nowak v. United States*, 356 U. S. 660, and *Maisenberg v. United States*, 356 U. S. 670, "it now appears that the . . . judgment of cancellation is voidable" and "that it is no longer equitable that said judgment should have prospective application." In denying the motion the District Court held that the *Nowak* and *Maisenberg* decisions "do not as contended by Polites clearly control the instant case warranting relief from judgment," and that, in any event, the doctrine of *Ackerman v. United States*, 340 U. S. 193, precludes reopening a judgment under Rule 60 (b) where the movant has voluntarily abandoned his appeal, and the only ground for the motion to reopen is an asserted later change in the judicial view of

applicable law. 24 F. R. D. 401. The Court of Appeals affirmed "for the reasons set forth" by the District Court. 272 F. 2d 709.

It is the contention of the Government that the "instant case is squarely controlled by the decision of this Court in *Ackerman v. United States*, 340 U. S. 193, that a freely made decision not to appeal a denaturalization judgment may not be excused by permitting recourse to Rule 60 (b) (6) as a substitute for appeal." In that case Mr. and Mrs. Ackerman and a relative, Keilbar, had been denaturalized after a joint hearing. Keilbar appealed. The Ackermans did not. On appeal the judgment of denaturalization against Keilbar was reversed upon a stipulation by the Government that the evidence was insufficient to support it. *Keilbar v. United States*, 144 F. 2d 866. The Ackermans thereafter filed a motion under Rule 60 (b) to vacate the denaturalization judgments against them. They alleged that they had failed to appeal from the judgments because of financial inability and in reliance upon the advice of a government official whom they trusted, the official who was in charge of the detention camp in which they had been placed following their denaturalization. After reviewing these allegations the Court held that the District Court had been correct in denying the motion to reopen the judgments, holding that "[s]ubsection (6) of Rule 60 (b) has no application to the situation of petitioner." 340 U. S., at 202.

What the Court said in *Ackerman* is of obvious relevance here:

"Petitioner made a considered choice not to appeal, apparently because he did not feel that an appeal would prove to be worth what he thought was a required sacrifice of his home. His choice was a risk, but calculated and deliberate and such as follows a free choice. Petitioner cannot be relieved of such a

choice because hindsight seems to indicate to him that his decision not to appeal was probably wrong, considering the outcome of the *Keilbar* case. There must be an end to litigation someday, and free, calculated, deliberate choices are not to be relieved from." 340 U. S., at 198.

In the present case it is not claimed that the decision not to appeal was anything but "free, calculated, and deliberate." Indeed, there is not even an indication in this case, as there was in *Ackerman*, that the choice was influenced by reliance upon the advice of a government officer. The only claim is that upon the advice of the petitioner's own counsel the appeal was abandoned because there seemed at the time small likelihood of its success, and that some four years later the applicable law was "clarified" in the petitioner's favor.

Despite the relevant and persuasive force of *Ackerman*, however, we need not go so far here as to decide that when an appeal has been abandoned or not taken because of a clearly applicable adverse rule of law, relief under Rule 60 (b) is inflexibly to be withheld when there has later been a clear and authoritative change in governing law. The fact of the matter is that that situation is not presented by this case. Without assaying by hindsight how hopeless the prospects of the petitioner's appeal may have appeared at the time it was abandoned,² it is clear that the later decisions of this Court upon which his motion to vacate relied did not in fact work the con-

² It is worth pointing out, with respect to the three other denaturalization judgments whose affirmance by the Sixth Circuit assertedly led to the petitioner's decision not to pursue his appeal, that each was decided upon the facts of its own individual record. 211 F. 2d 118. And it need hardly be repeated at this late date that the refusal by this Court to review those cases imported "no expression of opinion on the merits." *Sunal v. Large*, 332 U. S. 174, 181; see *Maryland v. Baltimore Radio Show*, 338 U. S. 912.

trolling change in the governing law which he asserted. The decisions in question are *Nowak v. United States*, 356 U. S. 660, and *Maisenberg v. United States*, 356 U. S. 670.

Petitioner contends that the *Nowak* and *Maisenberg* decisions reject the grounds relied upon by the District Court in revoking petitioner's citizenship in 1953. In the petitioner's denaturalization proceeding, the court held that a charge of illegal procurement of citizenship under the Nationality Act of 1940 could be sustained by clear, unequivocal and convincing evidence that (a) petitioner had been a member of the Communist Party within ten years immediately preceding the day he filed his citizenship application, and (b) the Communist Party had advised, advocated, or taught overthrow of the Government by force or violence during that period. Petitioner claims that this interpretation of the statute is erroneous because it fails to take into account the question of the petitioner's knowledge of the Party's activities. It was the claim of the petitioner's motion that *Nowak* and *Maisenberg* establish that "a charge of illegal procurement of citizenship based upon alleged membership in the Communist Party, cannot be sustained where the evidence fails to show . . . that the defendant was aware that the organization was engaged in the kind of illegal advocacy proscribed by law during the period of his membership therein." But the *Nowak* and *Maisenberg* decisions neither support nor oppose this interpretation of the 1940 Act. Those cases simply do not deal with the question.

In *Nowak* the petitioner had acquired his citizenship under the Nationality Act of 1906. That statute did not specifically prohibit citizenship to a member of an organization which advocated overthrow of the Government by force and violence. It did require an alien to have been "attached to the principles of the Constitution of the

United States" for at least five years preceding his application for citizenship.¹⁶ In order to show that Nowak had illegally procured his citizenship because during the five years preceding his naturalization he had not been "attached" to constitutional principles, the Government undertook to prove that he had been a member of the Communist Party with knowledge that the Party advocated the overthrow of the Government by force and violence. This Court found that the record contained adequate proof that Nowak had been a member of the Party during the pertinent five-year period, and it proceeded on the assumption that the evidence of the Party's illegal advocacy was sufficient. The Court held, however, that the Government had not established, under the standard required in denaturalization cases, that Nowak had known of the Party's advocacy of forcible governmental overthrow. Accordingly, the Court concluded that the Government had failed to prove Nowak's "state of mind." 356 U. S., at 696, his lack of "attachment" to constitutional principles, by the clear, unequivocal, and convincing evidence which is required. Cf. *Schneiderman v. United States*, 320 U. S. 118. *Maisenberg* was different in that the ultimate issue involved was whether the petitioner's citizenship had been obtained "by concealment of a material fact [and] willful misrepresentation."¹⁷

¹⁶ Paragraph 4 of § 4 of the Act, 34 Stat. 596, 598, as amended, 8 U. S. C. (1934 ed.) § 382, provided that no alien should be admitted to citizenship unless immediately preceding his application he had resided continuously within the United States for at least five years and that during this period "he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same."

¹⁷ The Government was seeking to denaturalize Maisenberg under the provisions of § 340(a) of the Immigration and Nationality Act of 1952, 66 Stat. 260, 8 U. S. C. § 1451(a). Under that statute illegal procurement as such is not a specific basis for cancellation of a certificate of naturalization.

356 U. S. at 671. But there, too, the Court held that the Government had failed to prove the petitioner's state of mind, her lack of "attachment" to the constitutional principles required by the 1906 Act, by its proof of her Communist Party membership and of the Party's advocacy.¹²

In the present case, by contrast, the District Court held that determination of the issue of illegal procurement did not involve an inquiry into the petitioner's state of mind. Unlike Nowak and Maisenberg, the petitioner was naturalized under the Nationality Act of 1940, which withheld the right of citizenship to any alien who had been a member of a particular kind of organization during the statutory period.¹³ The evidence that the petitioner was a "member of the Party" in every meaningful sense was abundantly shown. Cf. *Galvan v. Press*, 347 U. S. 522; *Rowaldt v. Perfetto*, 355 U. S. 115; *Niukkanen v. McAlexander*, 362 U. S. 390. The District Court found that the proof was also clear, unequivocal, and convincing that the organization to which the petitioner had belonged was in the category proscribed by the 1940 Act. Those findings remain completely unaffected by anything that was decided or said in either *Nowak* or *Maisenberg*.

As the District Court viewed the issue of illegal procurement in this case, there was no occasion, as in *Nowak* and *Maisenberg*, to establish by inference or imputation the petitioner's personal beliefs, his "attachment" or lack of it. The court was concerned only with objective

¹² In view of this conclusion the Court did not reach the further question under the 1952 Act whether the Government had adequately proved that petitioner had misrepresented her attachment or concealed a lack of attachment. See 356 U. S., at 672, note 3.

¹³ See note 4, *supra*.

¹⁴ It is to be emphasized that neither in his motion to set aside the denaturalization judgment nor in the supporting affidavit did the petitioner allege the existence of any new or mitigating evidence upon these factual issues. Cf. *Klapprott v. United States*, 335 U. S. 601.

facts—the petitioner's membership and the Party's purpose. Upon the basis of its findings as to these factual issues, the Court held that the "government must prevail on the jurisdictional question that defendant was not eligible to become a citizen either when he filed his naturalization petition or when he took the oath" 127 F. Supp., at 772. As the issue was determined, therefore, the case was consistent with many decisions in which this Court has ruled that a certificate of citizenship is cancellable on the basis of illegal procurement if there has not been strict compliance with the conditions imposed by Congress as prerequisites to acquisition of citizenship. See *Maney v. United States*, 278 U. S. 17; *United States v. Ness*, 245 U. S. 319; *United States v. Ginsberg*, 243 U. S. 472; cf. *Schneiderman v. United States*, 320 U. S. 118, 163 (concurring opinion).

The validity of the District Court's interpretation of § 305 is not before us; we are not here directly reviewing the 1953 decision. We hold only that the decisions in *Maisenberg* and *Nowak* were not effective to alter the law controlling the petitioner's case.

Affirmed.



SUPREME COURT OF THE UNITED STATES

No. 25.—OCTOBER TERM, 1960.

Gus Polites, Petitioner, | On Writ of Certiorari to the
v. | United States Court of Ap-
United States. | peals for the Sixth Circuit.

[November 21, 1960.]

MR. JUSTICE BRENNAN, with whom THE CHIEF JUSTICE, MR. JUSTICE BLACK, and MR. JUSTICE DOUGLAS join, dissenting.

In my view, the District Court should have exercised its discretion under Fed. Rules Civ. Proc., 60 (b) to determine whether it is any longer equitable that this judgment of denaturalization should have prospective application. The Court's opinion, although it refers to *Ackermann v. United States*, 340 U. S. 193, as "relevant and persuasive," expresses no definite view on the availability of Rule 60 (b) in this situation, but instead decides on the merits that the state of the law is substantially unchanged since the entry of the denaturalization decree. I would confirm the power of the District Court to act under Rule 60 (b), but remand the cause to that court so that it may, in the first instance, decide what effect the *Nowak* and *Maisen-berg* decisions have on petitioner's case.

First, it is necessary to point out that *Ackermann* is not in point. For one thing relief there was sought only under subdivisions (1) and (6) of Rule 60 (b), not, as here, under subdivision (5) as well. But more fundamentally, *Ackermann* was a case in which petitioners could have secured a reversal of their denaturalization simply by appealing. Since they deliberately chose not to appeal, this Court held Rule 60 (b) unavailable. Here also petitioner chose not to appeal, but only because of the hopelessness of any chance of success. The Court of

Appeals had affirmed judgments in three companion cases, and this Court had denied certiorari. True, denial of certiorari has no legal significance, and petitioner might have doggedly pursued his appellate remedies to the end. But as a practical matter such a course of action would have been futile. So petitioner's case must be considered not as one in which he could have appealed successfully, but as one in which he in fact did appeal unsuccessfully.

In that situation, it was the law long before the promulgation of Rule 60 (b) that a change in the law after the rendition of a decree was grounds for modification or dissolution of that decree insofar as it might affect future conduct. *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 18 How. 421, 431-432. This principle is rooted in the practice of courts of equity and is well settled in the vast majority of the States. See 7 Moore, *Federal Practice* (2d ed. 1955), ¶ 60.26 [4]; *Ladner v. Siegel*, 298 Pa. 487, 148 A. 699. Perhaps before the merger of law and equity in 1938 a denaturalization proceeding was an "action at law." But a decree of denaturalization is a determination of status which has prospective effect, and there is no reason why in modern times it should not be governed by equitable principles.

The decisions under Rule 60 (b) (5) (adopted by the 1948 amendments to the Federal Rules of Civil Procedure), continue this history of equitable adjustment to changing conditions of fact and law. *McGrath v. Potash*, 199 F. 2d 166, a case decided under subdivision (6), but to which subdivision (5), by the respondent's admission, was equally applicable, is directly in point. There several aliens obtained a decree from a District Court enjoining the Attorney General from proceeding to deport them without complying with the hearing requirements of the Administrative Procedure Act. Pending appeal by the Government, this Court held in *Wong Yang Sung v. McGrath*, 339 U. S. 33, that the Administrative Procedure

Act did indeed apply to deportation proceedings. Seeing that further resistance would be futile, the Attorney General dismissed his own appeal by agreement. Shortly thereafter Congress overruled the *Wong Yang Sung* decision and expressly declared that proceedings relative to the exclusion or expulsion of aliens should not be subject to the Administrative Procedure Act, 64 Stat. 1048. The Government then moved under Rule 60 (b) for a dissolution of the injunction against it, relying on this change in law, and the motion was granted. The United States in this case seeks to distinguish that decision by asserting that here "the continuing force of the decree derives from facts fully accrued and litigated in the original judgment." True enough; but here, as in *McGrath*, although the facts were fully accrued at the time of the decree and have not changed, the law has (so petitioner asserts) radically changed, and in that situation it is unjust to give the judgment prospective effect.

The cases under Rule 60 (b) (5) relied on by the United States are readily distinguishable. In *Title v. United States*, 263 F. 2d 28, cert. denied, 359 U. S. 989, *Elgin Nat'l Watch Co. v. Barrett*, 213 F. 2d 776, and *Berryhill v. United States*, 199 F. 2d 217, it was entirely possible that the remedy by appeal would have been successfully invoked. And in *Collins v. City of Wichita*, 254 F. 2d 837, a modification of the judgment would have retroactively disturbed existing rights and financial reliance on the judgment. In *Scotten v. Littlefield*, 235 U. S. 407, relief was denied in a situation virtually identical to this case. But the point actually decided there was that a bill of review would not lie, and it is universally conceded that Rule 60 (b) is not limited to those situations where the old confusing collateral remedies would have been available.

In sum, the District Court need "not abdicate its power to revoke or modify its mandate if satisfied that what it

has been doing has been turned through changing circumstances into an instrument of wrong." *United States v. Swift & Co.*, 286 U. S. 106, 114-115. It is revolting that petitioner should be subject to deportation because of a decree which he could not successfully have attacked on appeal and which subsequent events may have rendered erroneous. The principle of finality is not offended by modification which disturbs no accrued rights and concerns only future conduct.

Accordingly, I would reverse the judgment of the Court of Appeals and remand this case to the District Court with directions to exercise its discretion under Rule 60 (b) (5).